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Contents

Federal Register
Vol. 81, No. 71
Wednesday, April 13, 2016

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21874–21876

Agency for Toxic Substances and Disease Registry
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21876–21878

Agricultural Marketing Service
PROPOSED RULES
National Organic Program:
  Organic Livestock and Poultry Practices, 21956–22009

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Food Safety and Inspection Service
See Forest Service

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21878–21880
Charter Renewals:
  Advisory Board on Radiation and Worker Health, 21878
  Advisory Committee on Immunization Practices, 21880–21881
Meetings:
  Board of Scientific Counselors, National Center for Health Statistics, 21881
  Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 21878, 21881
  Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health, 21880

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Child Care and Development Fund (CCDF) Tribal Reporting Requirements, 21881–21882
Single-Source Expansion Supplements:
  Community Action Partnership in Washington, DC, 21882

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Privacy Act; Systems of Records, 21837–21839

Commodity Credit Corporation
RULES
Margin Protection Program for Dairy, 21699–21706

Commodity Futures Trading Commission
NOTICES
Public Availability of Fiscal Year 2015 Service Contract Inventory, 21849

Consumer Product Safety Commission
PROPOSED RULES
Rules of Practice for Adjudicative Proceedings, 21775–21795

Defense Acquisition Regulations System
NOTICES
Negotiation of a Reciprocal Defense Procurement Memorandum of Understanding with the Ministry of Defense of Latvia, 21849–21850

Defense Department
See Defense Acquisition Regulations System
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Change Order Accounting, 21872–21873
  Contract Funding — Limitation of Costs/Funds, 21873
  Economic Price Adjustment, 21870–21871

Education Department
PROPOSED RULES
Priorities, Requirements, Definitions, and Selection Criteria:
  Disability Innovation Fund — Transition Work-Based Learning Model Demonstrations, 21808–21814

Election Assistance Commission
NOTICES
Meetings:
  Standards Board; Correction, 21850–21851

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Changes in Control:
  Cheniere Marketing, LLC, Corpus Christi Liquefaction, LLC, Sabine Pass Liquefaction, LLC, 21851–21853

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  Regional Haze Federal Implementation Plan; Reconsideration, 21735–21747
  Texas; Control of Air Pollution from Nitrogen Compounds State Implementation Plan, 21747–21752
Pesticide Tolerances:
  Acequinocyl, 21752–21756
PROPOSED RULES
Finding of Attainment and Approval of Attainment Plans:
  Klamath Falls, OR Fine Particulate Matter Nonattainment Area, 21814–21830
Significant New Use Rule on Certain Chemical Substances, 21830–21835
NOTICES
EPA–USGS Technical Report:
  Protecting Aquatic Life from Effects of Hydrologic Alteration, 21863–21864
Meetings:
  Orientation Session for the Chemical Safety Advisory Committee, 21864–21865

NPDES General Permits:
Stormwater Discharges From Small Municipal Separate Storm Sewer Systems in Massachusetts, 21862–21863

Federal Aviation Administration

RULES
Airworthiness Directives:
Airbus Airplanes, 21722–21726, 21732–21735
Airbus Helicopters (formerly Eurocopter France), 21713–21716
Bombardier, Inc. Airplanes, 21709–21711
SOCATA Airplanes, 21711–21713
The Boeing Company Airplanes, 21716–21722, 21726–21729
Airworthiness Directives;
Airbus Airplanes, 21730–21732
Establishment of Class E Airspace:
South Bend, WA; Correction, 21735
PROPOSED RULES
Airworthiness Directives:
Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes, 21766–21768
Dassault Aviation, 21770–21772
International Aero Engines AG Turbofan Engines, 21768–21770
The Boeing Company Airplanes, 21762–21766
Amendments of Class D and E Airspace and Revocations of Class of Class E Airspace:
Sioux City, IA, 21772–21773
Amendments of Class E Airspace and Revocations of Class E Airspace:
De Quincy, LA, Minden, LA, Slidell, LA; Homer, LA, 21774–21775
NOTICES
Aerospace Fuel, Engine Oil, and Hydraulic Hose Assemblies, 21950
Request To Release Airport Property, 21950–21951

Federal Communications Commission

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21865–21869
Meetings:
Public Safety and Homeland Security Bureau, 21869–21870

Federal Energy Regulatory Commission

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21859–21860
Applications:
Grand River Dam Authority Project, 21861
Public Utility District No. 2 of Grant County Project, 21856–21857
Authorization for Continued Project Operation:
City of Loveland, CO, 21858
Yuba County Water Agency, 21861–21862
Combined Filings, 21853–21856, 21858–21861
Environmental Assessments; Availability, etc.:
Revised Schedule for Environmental Review of the Triad Expansion Project, 21861
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Live Oak Solar, LLC, 21862
Records Governing Off-the-Record Communications, 21857–21858
Staff Attendances, 21860

Federal Highway Administration

NOTICES
Environmental Impact Statements; Availability, etc.:
Kake Access Project, Southeast Alaska; Recisssion, 21951

Federal Maritime Commission

NOTICES
Agreements Filed, 21870

Federal Reserve System

NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 21870

Fish and Wildlife Service

NOTICES
Endangered and Threatened Wildlife and Plants Permit Applications, 21892–21898

Food and Drug Administration

NOTICES
Meetings:
Circulatory System Devices Panel of the Medical Devices Advisory Committee, 21882–21883

Food Safety and Inspection Service

RULES
Classes of Poultry, 21706–21709
PROPOSED RULES
Eligibility of Honduras to Export Poultry Products to the United States, 21758–21762

Forest Service

NOTICES
Environmental Impact Statements; Availability, etc.:
Kootenai National Forest; Fortine Ranger District; Montana; Ten Lakes Travel Management Project, 21836
Meetings:
South Central Idaho Resource Advisory Committee, 21837

General Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Change Order Accounting, 21872–21873
Contract Funding — Limitation of Costs/Funds, 21873
Economic Price Adjustment, 21870–21871
Notification of Ownership Changes, 21871–21872
Meetings:
GSA Labor-Management Relations Council; Cancellation, 21873–21874

Health and Human Services Department

See Agency for Healthcare Research and Quality
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

NOTICES
Meetings:
Presidential Commission for the Study of Bioethical Issues, 21883–21884

Homeland Security Department

NOTICES
- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - Chemical Security Assessment Tool, 21887–21891
- Exercise of Authority under the Immigration and Nationality Act, 21891–21892

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service

PROPOSED RULES
- Deemed Distributions of Stock and Rights to Acquire Stock, 21795–21808

NOTICES
- Requests for Nominations:
  - Internal Revenue Service Advisory Council, 21952–21953

International Trade Administration

NOTICES
- Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
  - Certain Steel Grating from the People's Republic of China, 21843–21845
  - Freshwater Crawfish Tail Meat from the People's Republic of China, 21840–21842
- Charter Renewal:
  - Manufacturing Council, 21840
- Meetings:
  - Environmental Technologies Trade Advisory Committee Public Meeting, 21839–21840
- Requests for Nominations:
  - United States Investment Advisory Council, 21842–21843

Justice Department

NOTICES
- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - 2016 Law Enforcement Administrative and Management Statistics Survey, 21903–21904

Labor Department

See Mine Safety and Health Administration
See Workers Compensation Programs Office

Land Management Bureau

NOTICES
- Temporary Closure of the Ash Springs Recreation Site on Public Lands in Lincoln County, NV; Extensions, 21898–21899

Mine Safety and Health Administration

NOTICES
- Petitions for Modification:
  - Applications of Existing Mandatory Safety Standards, 21904–21905

National Aeronautics and Space Administration

NOTICES
- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - Change Order Accounting, 21872–21873
  - Contract Funding — Limitation of Costs/Funds, 21873
  - Economic Price Adjustment, 21870–21871

National Highway Traffic Safety Administration

NOTICES
- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21951
- Meetings:
  - Developing Evidence Based Fatigue Risk Management Guidelines for Emergency Medical Services, 21951–21952

National Institute of Standards and Technology

NOTICES
- Nondestructive Evaluation Techniques for Assessing Alkali-Silica Reaction Degradation of Concrete Consortium, 21845–21846

National Institutes of Health

NOTICES
- Meetings:
  - Center for Scientific Review, 21884, 21886
  - National Center for Advancing Translational Sciences, 21886–21887
  - National Eye Institute, 21885
  - National Institute of Diabetes and Digestive and Kidney Diseases, 21887
  - National Institute on Alcohol Abuse and Alcoholism, 21885
  - National Institute on Deafness and Other Communication Disorders, 21884–21885
  - National Science Advisory Board for Biosecurity, 21885–21886

National Oceanic and Atmospheric Administration

RULES
- Fisheries of the Exclusive Economic Zone Off Alaska:
  - Pacific Cod in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area, 21756–21757

NOTICES
- Meetings:
  - Fisheries of the Gulf of Mexico; Southeast Data, Assessment and Review; Gulf of Mexico Data-limited Species, 21848–21849
  - Mid-Atlantic Fishery Management Council, 21846–21847
  - Office of Ocean Exploration and Research, 21847–21848
  - South Atlantic Fishery Management Council; Scientific and Statistical Committee; Social and Economic Sciences Panel, 21847

National Park Service

NOTICES
- Inventory Completions:
  - Department of the Interior, Bureau of Land Management, Nevada State Office, Reno, NV, 21901–21902
  - History Colorado, formerly Colorado Historical Society, Denver, CO, 21899–21900
- Repatriation of Cultural Items:
  - History Colorado, formerly Colorado Historical Society, Denver, CO, 21899, 21902–21903

National Science Foundation

NOTICES
- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21906–21907

Navy Department

NOTICES
- Government-Owned Inventions; Available for Licensing, 21850

Grants of Partially Exclusive Patent Licenses:
  BladeBeam, Inc., 21850

Nuclear Regulatory Commission
NOTICES
Proposed Emergency Preparedness Frequently Asked Questions, 21907–21908

Postal Regulatory Commission
NOTICES
Mail Classification Change, 21908–21909

Postal Service
NOTICES
Meetings; Sunshine Act, 21909

Presidential Documents
PROCLAMATIONS
Special Observances:
  National Crime Victims' Rights Week (Proc. 9418), 22011–22014
  National Former Prisoner of War Recognition Day (Proc. 9421), 22019–22020
  National Volunteer Week (Proc. 9419), 22015–22016
  Pan American Day and Pan American Week (Proc. 9420), 22017–22018
EXECUTIVE ORDERS
Amending Executive Order 12137 (EO 13724), 22021

Securities and Exchange Commission
NOTICES
Filings:
  Proposed Amendments to Board Rules Relating to Inspections, 21909–21914
Self-Regulatory Organizations; Proposed Rule Changes:
  Chicago Board Options Exchange, 21931–21932
  Chicago Board Options Exchange, Inc., 21928–21931
  Financial Industry Regulatory Authority, Inc., 21914–21916, 21924–21928
  ISE Mercury, 21933–21935
  NASDAQ PHLX LLC, 21935–21943
  NYSE Arca, Inc., 21916–21921
  The NASDAQ Stock Market LLC, 21921–21924
Trading Suspension Orders:
  Business Marketing Services, Inc., Diversified Corporate Resources, Inc., Great Lakes Recreation Co., et al., 21932–21933

Small Business Administration
NOTICES
Disaster Declarations:
  Louisiana, 21943–21944
  Mississippi, 21943
  Texas, 21943

Social Security Administration
NOTICES
Rulings:
  Using Genetic Test Results to Evaluate Disability, 21944–21949

State Department
NOTICES
Meetings:
  Advisory Committee on International Economic Policy, 21949

State Justice Institute
NOTICES
Meetings:
  SJI Board of Directors, 21949

Tennessee Valley Authority
NOTICES
Meetings:
  Regional Resource Stewardship Council; Correction, 21949–21950

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service
NOTICES
Meetings:
  Debt Management Advisory Committee, 21953

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21905–21906

Separate Parts in This Issue

Part II
Agriculture Department, Agricultural Marketing Service, 21956–22009

Part III
Presidential Documents, 22011–22021

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

9418....22013
9419....22015
9420....22017
9421....22019

Executive Orders:

12137 (amended by 13724)....22021
13724....22021

7 CFR

1430....21699

Proposed Rules:

205....21956

9 CFR

381....21706

Proposed Rules:

381....21758

14 CFR

39 (9 documents)....21709, 21711, 21713, 21716, 21720, 21722, 21726, 21730, 21732
71....21735

Proposed Rules:

39 (4 documents)....21762, 21766, 21768, 21770
71 (2 documents)....21772, 21774

16 CFR

Proposed Rules:

1025....21775

26 CFR

Proposed Rules:

1....21795

34 CFR

Proposed Rules:

Ch. III....21808

40 CFR

52 (2 documents)....21735, 21747
180....21752

Proposed Rules:

52....21814
721....21830

50 CFR

679....21756

Rules and Regulations

Federal Register
Vol. 81, No. 71
Wednesday, April 13, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AI36

Margin Protection Program for Dairy

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the Margin Protection Program for Dairy (MPP-Dairy) to allow dairy operations to update their production history when a son, daughter, grandchild, or spouse of a child or grandchild of a current producer participating in the MPP-Dairy program joins the operation. In addition, this rule provides for a later due date for the payment of the entire premium and clarifies that dairy operations that purchase buy-up coverage on less than 90 percent of their production history will also receive catastrophic coverage on the balance, up to 90 percent of the production history. The rule also makes corrections and clarifications.

DATES: This rule is effective April 13, 2016.

FOR FURTHER INFORMATION CONTACT: For MPP-Dairy: Danielle Cooke; telephone: (202) 720–1919. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2014, the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) published a final rule titled "Margin Protection Program for Dairy and Dairy Product Donation Program" (79 FR 51453–51470). The final rule implemented MPP-Dairy and DPDP as authorized in the Agricultural Act of 2014 (the 2014 Farm Bill, Pub. L. 113–79). FSA operates both programs using CCC funds. Following the August 2014 final rule, in response to public comments on the final rule, FSA and CCC published a comment period extension on October 30, 2014, (79 FR 64503) for the final rule; comments were accepted through December 15, 2014. This rule makes regulatory changes to MPP-Dairy in response to the public comments and also makes minor corrections and clarifications. Specifically, this rule:

- Allows dairy operations to update their production history once during the term of the contract (through December 31, 2018) to accommodate intergenerational transfers where a son, daughter, grandchild, or spouse of a child or grandchild joins the dairy operation;
- Clarifies that dairy operations that purchase buy-up coverage on less than 90 percent of their production history will also receive catastrophic coverage on the balance, up to 90 percent of the production history;
- Sets a later final premium payment due date to allow greater flexibility for dairy operations in making payments; and
- Includes technical amendments that make minor corrections and clarify the effects of failure to pay administrative or premium fees.

Subtitle D, sections 1401–1410, of the 2014 Farm Bill (7 U.S.C. 9051–9060) authorizes MPP-Dairy to provide risk management coverage that will pay producers when the difference between the price of milk and the cost of feed (the margin) falls below a certain dollar amount selected by the producer. Producers are eligible for catastrophic level margin protection (based on a $4 margin and 90 percent production history coverage) for their dairy operations by paying an administrative fee, and are also able to purchase greater coverage (up to $8 margin on 25 to 90 percent of production history) for an additional premium.

A production history is established when a dairy operation first registers to participate in MPP-Dairy. The production history is based on the operation's production from 2011 through 2013, as specified in the 2014 Farm Bill. For entirely new operations or operations with less than a full year of production history prior to the 2014 Farm Bill, it is based on the number of cows and the national average production per cow (the "national rolling herd average data") or an extrapolation from the operation's actual production data. As specified in section 1405 of the 2014 Farm Bill, once an operation has bought MPP-Dairy coverage, FSA will only update the production amount that can be covered to reflect annual changes in the national average milk production. (For example, if national milk production increases 5 percent in a year, operations can buy MPP-Dairy coverage on up to 5 percent more production the following year, up to 90 percent of production). Section 1410 of the 2014 Farm Bill also specifically requires that the Secretary promulgate regulations that prohibit a dairy producer from reconstituting an operation for the purpose of receiving margin protection payments. The intent of these provisions is to ensure that the risk management coverage does not encourage excess production that could drive down the price of milk, which would be counterproductive for a price-based risk management program.

In the August 29, 2014, final rule, FSA requested comments about the establishment of additional production history and any limitations for such a production increase under MPP-Dairy since that final rule only addressed additional production history for the annual adjustment based on an increase to the national average milk production. The final rule did not address the establishment of additional production history for a participating dairy operation in specific instances, such as when a descendent of the current producer joins a participating dairy operation.

The ability to transfer the dairy business from one generation to the next has become increasingly difficult in the past decade due to increased market volatility and the large capital investment required to start a dairy operation. While the August 29, 2014, regulation does allow for new covered production for entirely new operations, many new dairy farmers get started by joining their family's existing dairy operation, due to the capital costs involved. Under the August 29, 2014, rule, if an existing family-owned dairy operation with MPP-Dairy coverage added more cows to support a family member or members joining the business, they would not be able to buy MPP-Dairy coverage on that additional production.

Comments and Responses

In response to the August 29, 2014, final rule, FSA received 38 comments. Comments were submitted by individuals, insurance providers, industry groups (including coalitions, associations, farm credit organizations, dairy cooperatives, and milk marketing companies), and a State Department of Agriculture.

The preamble to the August 29, 2014, final rule asked for public input on three specific questions about intergenerational transfers and family members, as well as general comments on other aspects of MPP-Dairy. All of the comments received on intergenerational transfers supported provisions to allow additional production history under certain circumstances, with various suggestions for what eligibility requirements should be. A summary of the input received on three questions, and our responses, is provided below, followed by a discussion of other general comments received.

Do the provisions in the rule regarding transfers of production history hinder intergenerational transfers of dairy operations? If so, how?

Comment: Yes, the provisions in the final rule hinder intergenerational transfers. Under current MPP-Dairy rules, once the production history for a dairy operation under MPP-Dairy is established, other than the annual production increase, the production history cannot not be adjusted to support the income needs of two or more families (or one extended family) in instances when a dairy farmer wants to bring on a son or daughter or spouse of a son or daughter and add more cows to the herd.

Response: We agree. The average age of dairy farmers in the United States is 62 years old; allowing intergenerational transfers of production history will facilitate the transfer of dairy operations to the next generation, which is particularly important for small family operations. Therefore, this rule will amend production history requirements to add § 1430.105(g) to specify that a dairy operation may add additional production history for an intergenerational transfer when a lineal descendant, or spouse thereof, joins a participating dairy operation. In addition, this rule adds a definition of "intergenerational transfer" to § 1430.102. Only sons, daughters, grandchildren, and their spouses are included in the definition. Intergenerational transfers to more distant non-lineal relatives such as cousins, nieces, or nephews will not result in eligibility for additional production history, nor will transfers to siblings.

How would you suggest the rule be amended to accommodate intergenerational transfers or adult children who want to join their parent's dairy operation and obtain additional production history for the dairy operation?

Comment: Suggestions included:

- Allow a one-time reorganization of the ownership structure to allow for children, grandchildren, or their spouses joining the farm, but specify that the additional member(s) must meet certain requirements, such as minimum labor contribution and equity ownership standards; significant equity ownership should be at least 10 percent individually or at least 25 percent collectively, if multiple new members are joining the dairy operation at the same time;
- Require that the farm provide adequate supporting documentation of a legitimate restructure within a family operation that includes verifiable financial investments proportionate to the income needs of the new farmer and the size of the dairy operation;
- Restrict it to a lineal descendant or their spouse, not a distant relative;
- Determine additional production history using similar provisions for establishing production history for new dairy operations in § 1430.105(b) where the additional production quantity would be estimated based on the number of additional cows added to the herd multiplied by the national "rolling herd average" production data published by the Secretary; and
- To ensure all production from the additional member is protected, either allow an operation's base to be a rolling average of the last 3 years of production or allow 50 percent of production above the base, including the adjustment for the average national increase to be included with the base calculation during times when MPP-Dairy activates.

Response: This rule amends production history requirements to allow for a one-time restructuring of currently established production history for a dairy operation when a son, daughter, grandchild, or spouse of child or grandchild of a current operation member joins an MPP-Dairy participating operation, to accommodate the transfer of a dairy from one generation to a subsequent generation. The increase to the production history will be based on how many cows are being added and the national rolling herd average data (national average annual production per cow) in effect at the time of the intergenerational transfer. The operation must certify to equity and labor contributions by the new member(s) as well, as specified in this rule. The certification must show that the new member(s) has a significant equity ownership in the participating MPP-Dairy operation; "significant equity ownership" will be at levels determined by the Deputy Administrator and announced on the FSA Web site (*www.fsa.usda.gov*). The certification must also show that each new member is working full time at the dairy, or transitioning to working full time at the dairy. We considered an income-based standard, but that would not be consistent with the provisions in the regulation that apply to the production history for other existing and new operations, which use past production and size of herd to determine production history.

The participating dairy operation will have the option for coverage of the additional production history to begin with either the next consecutive 2-month period following notification to FSA, or January 1 following notification.

For cow purchases made by the new members between January 1, 2016, and June 30, 2016, the operation must notify FSA during the coverage year 2017 registration and annual coverage election period that begins July 1, 2016. For cow purchases made on or after July 1, 2016, notification to FSA must be made within 60 days of purchasing the additional cows.

Participating dairy operations in which an intergenerational transfer occurred in calendar year 2014 or 2015 will have an opportunity to increase the dairy operation's production history during the 2017 registration period. The 2014 and 2015 intergenerational transfers will have to meet the same requirements specified for all intergenerational transfers, except for the 60-day notification period applicable only to the purchase of additional cows made on or after July 1, 2016. The opportunity to increase production history based on an intergenerational transfer that occurred in 2014 or 2015 will only be available during the registration and annual coverage election period that begins July 1, 2016. This provision only applies to an increase in production history for 2016 and subsequent year coverage. These dairy operations will have the option for their coverage to begin on either the consecutive 2-month period following FSA notification or January 1, 2017. There will be no retroactive payments made related to 2014 or 2015 intergenerational transfers.

Premiums for additional production coverage will be due at the same time as the premium on existing production, if the notification is made between January 1 and August 31, prior to the September 1 premium deadline, or immediately if notification is made during September 1 to December 31.

If additions to production history based on intergenerational transfers or adult children joining family dairies are allowed, should there be a cap on the overall amount of production history that cannot be exceeded or a percentage or quantity limitation on the amount by which the production history could be increased per participating dairy operation under this provision? If so, what amount?

Comments: Suggestions included:

- Yes, there should be a cap on the additional production quantity resulting from the intergenerational transfer in order to discourage gaming of the system;
- A production quantity capped at 4 million pounds is consistent with other limitations of the same production quantity specified in the 2014 Farm Bill with respect to the 2-tier premium rate schedule that increases premium rates for production history in excess of 4 million pounds;
- For the production increase, use a percentage based on the farm's production history and the total number of members receiving income from the farm, compared before and after the new generation was included;
- The production allowance increase should be proportionate to the income needs of the new farmer and not proportional to the size of the dairy;
- Up to 4 million pounds of new production history can be added to the established production history for a member joining the dairy operation with a pro-rated accommodation for growth beyond that limit.

Response: The suggested 4 million pound cap is consistent with the intent of the 2014 Farm Bill to support modest-sized family farms, as demonstrated in the 2-tier premium structure where the discounted first tier is set at 4 million pounds. Therefore, this rule caps the production history increase for an intergenerational transfer at a maximum of 4 million pounds.

Other Issues Raised in Public Comments

Comment: Producers who bought coverage above the minimum catastrophic level on some production should receive catastrophic level coverage on all production history up to 90 percent. In the current regulations, producers must choose either a buy-up coverage or catastrophic coverage, but not both. Providing catastrophic level coverage to all participants on 90 percent of production is a reasonable interpretation of the 2014 Farm Bill intent.

Response: After careful analysis, we agree, and are changing the regulations to allow participants who purchase buy-up level coverage on less than 90 percent of their production history to receive in addition catastrophic level coverage on the balance, up to 90 percent of their production history. The total coverage cannot exceed the statutory maximum of 90 percent of production history. We believe that MPP-Dairy will be improved by allowing operations that cover from 25 percent to 85 percent of their production history at a buy-up coverage level from $4.50 to $8.00 per cwt, to also be covered for the balance of their established production history at the $4.00 catastrophic level. For example, if an operation purchased buy-up coverage at the 50 percent level, then that operation will receive catastrophic level coverage for the next 40 percent resulting in total coverage of 90 percent. This provision would not affect an operation purchasing buy-up coverage at the 90 percent level since it would already be covered at the maximum statutory percentage. This change will allow producers to better meet their risk management needs and will not discourage producers from electing buy-up coverage with greater protection. Therefore, this rule revises § 1430.108 to make the changes to how payments will be calculated. The change will provide producers with more risk management options and may increase producer participation in MPP-Dairy. Implementation of this change will begin with the 2016 coverage year. Since MPP-Dairy's inception, margin levels have been consistently above the $4.00 catastrophic level; so, implementing this policy will have no immediate impact on current MPP-Dairy participants.

Comment: Clarify inconsistencies in the premium payment schedule in § 1430.107(g)(2), which requires 50 percent of the total premium payment by February 1 of the coverage year and the balance by June 1; and the Fact Sheet and forms that say 25 percent by February 1 of the coverage year and the balance by the June 1. The Fact Sheet and forms for MPP Dairy are not consistent with the rule.

Premium payment options should be allowed on a monthly or bi-monthly basis rather than annually or semi-annually. A premium payment option should allow milk marketing companies to collect and send premium payments to FSA on behalf of the dairy operation by way of milk check deductions of premiums on a monthly basis by the dairy operation's milk marketing company.

Response: We agree that MPP-Dairy would be improved by providing additional premium payment options. Therefore, effective with the 2016 coverage year, rather than require the balance of the premium collection in two payment installments by June 1 of the coverage year, the rule will change § 1430.107 to require 100 percent of the payment by September 1 of the coverage year. This would allow dairy producers to make arrangements with their milk marketing companies to prorate and deduct their premium payment from their monthly milk check and to send the CCC payments to FSA on behalf of the producer. We will correct the Fact Sheet and forms as noted in the comment when this rule is published.

This rule makes conforming changes in § 1430.107(g)(2), (h), (i), and (j). For example, due to the split premiums provision in the August 29, 2014, regulation, an option had been included to deduct premium balances from MPP-Dairy payments. Now that the premium payment is due in a single payment, that option is being removed from § 1430.107(g)(2), (h), (i).

Comment: Dairy producers should be able to participate in both the Livestock Gross Margin for Dairy Producers (LGM-Dairy) Program and MPP-Dairy. They should be able to buy LGM-Dairy coverage on milk not covered under MPP-Dairy up to 100 percent of their dairy operation's total production.

Revise the rules to allow dairy operations to choose annually whether or not to participate in LGM-Dairy or MPP-Dairy and not require mandatory participation in MPP-Dairy through 2018 to allow flexibility to move back and forth from LGM-Dairy and MPP-Dairy.

Response: The 2014 Farm Bill specifies that a dairy operation may participate in either LGM-Dairy or MPP-Dairy, but not both. Therefore, we do not have statutory authority to make either of these changes to the regulations. Additionally, section 1404 of the 2014 Farm Bill specifies that the MPP-Dairy administrative fee must be paid annually by the participant; so, clearly the intent of the legislation is that participants continue participation for the duration of MPP-Dairy (because there would be no need for an "annual" payment for a policy that only lasted 1 year). Therefore, no change is being made in response to these comments.

Comments: Make an adjustment to increase the overall production history established for a dairy operation to allow for greater protection and the expansion or growth of the operation. New production rules should allow for full recognition of growth up to 4 million pounds and then a base that would allow some pro-rated accommodation for growth beyond that limit. Recognize new milk marketings for farms in transition as new operations and allow beginning farmers to adjust production history when purchasing an existing dairy operation. Allow production adjustments for disaster counties.

Response: The 2014 Farm Bill clearly limits increases in production history to annual adjustments to reflect any increase in the national average milk production per cow, with limited authority to update production history for changes in ownership structure. The 2014 Farm Bill does not provide the authority to add production history for other reasons, including business expansions or declared disaster counties, and specifically prohibits reconstitutions for the purpose of increasing MPP-Dairy payments. The new provisions in this rule for adjustments to production history for intergenerational transfers is based on the authority of section 1401(5)(B) of the 2014 Farm Bill that allows for the Secretary to determine additional ownership structures to be covered by the definition of a dairy operation, in this case the addition of a son, daughter, grandchild, or spouse of a child or grandchild to the dairy operation. Since the 2014 Farm Bill does not authorize any other reasons for adjustments to the established production history for the dairy operation, no change is being made in response to these comments.

Comments: For the production history covered under MPP-Dairy, allow extrapolation for a full 12 months of production as is done for new operations for those producers who missed some production months in 2013 during the period between of January 2, 2013 through February 7, 2014.

Response: Producers that marketed milk from January 2, 2013, through February 7, 2014 (date of 2014 Farm Bill enactment) do not meet the legislative definition of a new dairy operation because they would have been marketing milk for more than 12 months; therefore, the date of the 2014 Farm Bill enactment was used as a benchmark to establish the 12-month period from which to determine new operations. Defining the 12-month period from any other date would exclude more dairy operations from eligibility. Therefore, no change is being made in response to this comment.

Comment: MPP-Dairy payments should be made on a monthly or bi-monthly basis rather than on a consecutive 2-month period when a payment is triggered.

Response: The 2014 Farm Bill specifies the schedule for MPP-Dairy payments. We have no authority to implement a different schedule. Therefore, no change is being made in response to this comment.

Comment: The premium discount applicable to the first 4 million pounds of production history in 2014 and 2015 should continue for the duration of MPP-Dairy. Premiums would continue to rise to the point that they are unaffordable for farmers because there is no margin trigger to reduce production because of price losses due to over-production.

Response: The annual premium rates listed in the regulation are specified in the 2014 Farm Bill. FSA has no authority to set different premium rates other than those in the 2014 Farm Bill. Therefore, no change is being made in response to these comments.

Comments: For coverage under MPP-Dairy, documented production over the national average of production per cow should be insured.

Organic farms should have more coverage because of higher overall feed costs that make their margins lower than conventional farms.

Response: The 2014 Farm Bill does not authorize additional coverage for production over the national average or different coverage for organic farmers. Therefore, no change is being made in response to these comments.

Comment: For the cost of production in relation to feed costs and milk prices, the 2014 Farm Bill should have been similar to that of the Federal Milk Marketing Improvement Act of 2011 (S. 1640, 112th Congress) to provide adequate prices to farmers. MPP-Dairy did not adequately cover the farmers cost of production and is inadequate protection on feed cost. Feed prices are higher on the west coast and prices for specific feed ingredients used in calculating the margin have not dropped much in that region of the United States.

Response: Congress did not enact the bill titled "Federal Milk Marketing Improvement Act of 2011." We are required to implement MPP-Dairy as specified in the 2014 Farm Bill. The 2014 Farm Bill specified that the margin is to be calculated using a national average feed cost and the national all-milk price. Therefore, no change is being made in response to these comments.

Comment: The affiliation test for what constitutes a new dairy operation is impractical. Producers that have collectively more than a 50 percent ownership in another dairy operation should be able to get coverage for a new operation, if they can demonstrate that the operation is separate and distinct from the existing dairy operation, but the new and existing dairy operation would be restricted from selling or exiting the dairy business.

Response: Section 1410 of the 2014 Farm Bill specifically states that the regulations must prohibit producers from dairy operation reconstitutions for the purposes of receiving MPP-Dairy payments. The provision in § 1430.103 that a new dairy operation will be treated as an affiliated dairy operation if the producers in the new operation own 50 percent of an existing dairy operation is consistent with the farm reconstitution provisions in 7 CFR part 718, which are intended to prohibit reconstitutions for the purposes of increasing other CCC and FSA program payments. FSA believes the provisions to accommodate new dairy operations as specified in the current rule are within the 2014 Farm Bill authority, and are consistent with how reconstitutions and base acres are handled in the regulations for other CCC and FSA programs. The provisions in this rule for intergenerational transfers are intended to address expansions of existing dairy operations to add additional family members within the same operation. Also, we have no authority to prevent any dairy operation from selling or shutting down. No change is made in response to this comment.

Comment: Are MPP-Dairy funds sufficient to reimburse farmers in the event of a shortfall? Will funds be invested within insurance companies?

Response: FSA administers MPP-Dairy using CCC funds and not through private insurance companies; therefore, FSA may use CCC borrowing authority to replenish funds as necessary. Private insurers are not involved in MPP-Dairy.

Corrections and Clarifications

This final rule revises § 1430.104(b)(1), to correct wording that allows a new dairy operation to elect coverage that begins the next consecutive 2-month period following the submission date of the registration and coverage election rather than the approval date of the MPP-Dairy coverage application.

This final rule also revises §§ 1430.106(c), 1430.109(a)(2), and 1430.112(b) to clarify the effects of failure to pay the administrative or premium fees. Failure to pay the administrative fee timely will result in loss of coverage for the applicable calendar year; however, coverage for the applicable calendar year may be reinstated with the next consecutive 2-month period if paid late and the appropriate CCC form is submitted to FSA. In the case of unpaid premiums, coverage will be reduced to the catastrophic level and no payment will be earned at the buy-up level for the rest of the year. This rule also amends § 1430.112(b) to correct the cross reference from § 1430.108 to § 1430.109.

This final rule also revises §§ 1430.106(a) and 1430.107(l) to correct that fees should be made payable to CCC rather than to FSA.

This rule amends §§ 1430.107 and 1430.111 to remove provisions that only applied to the 2014 and 2015 coverage years.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Regulations to implement the provisions of Title I of the 2014 Farm Bill and the administration of Title I are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. Subsection 1601(c)(2) of the 2014 Farm Bill makes this final rule exempt from notice and comment. Therefore, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. Therefore, to continue providing benefits to operations in a timely fashion, the MPP-Dairy regulations in 7 CFR part 1430, subpart A are effective when published in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, "Regulatory Planning and Review," and therefore, OMB has not reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because the 2014 Farm Bill exempts this rule from notice and comment rulemaking under 5 U.S.C. 553 with respect to MPP-Dairy and therefore, FSA is not required by any law to publish a proposed rule for public comment for this rulemaking.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). FSA has determined that the provisions identified in this final rule are administrative in nature, intended to clarify the mandatory requirements of the programs, as defined in the 2014 Farm Bill, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. The discretionary feature of the rule include when operations can increase production history and what coverage they will receive. These discretionary provisions are purely administrative and would not alter any environmental impacts resulting from implementing the mandatory program. Therefore, as this rule presents administrative clarifications only, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will have a retroactive effect that will allow a production history increase for dairy operations that had an intergenerational transfer occur in calendar year 2014 or 2015. However, there will not be any retroactive payments for the production history increase. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule under SBREFA. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, the rule is effective when published in the **Federal Register**, as discussed above.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10. 116—Margin Protection Program-Dairy

Paperwork Reduction Act of 1995

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in subsection 1601(c)(2)(B) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

FSA and CCC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1430

Dairy products, Fraud, Penalties, Price support programs, Reporting and recordkeeping requirements.

For the reasons discussed above, the regulations at 7 CFR part 1430 are amended as follows:

PART 1430—DAIRY PRODUCTS

■ 1. The authority citation for part 1430 continues to read as follows:

Authority: 7 U.S.C. 8773, 9051–9060, and 9071 and 15 U.S.C. 714b and 714c.

■ 2. In § 1430.102, add in alphabetical order a definition for "intergenerational transfer" to read as follows:

§ 1430.102 Definitions.

* * * * *

Intergenerational transfer means the one-time establishment of additional production history for a participating dairy operation when a lineal descendant, who is a son, daughter, grandchild, or spouse of a child or grandchild of a current member joins a participating dairy operation.

* * * * *

§ 1430.104 [Amended]

■ 3. Amend § 1430.104 as follows:

■ a. In paragraph (b)(1), remove the word "approval" and add the word "submission" in its place;

■ b. In paragraph (c)(1), remove the words ", except for 2014, where the election and coverage year will be the same",

■ c. In paragraph (e) introductory text, remove the word "percentages" and add the word "percentage" in its place, and

■ d. In paragraph (e)(2), add the words "and submits the appropriate CCC forms" to the end after the word "year".

■ 4. Amend § 1430.105 by revising paragraph (d) and add paragraph (g) to read as follows:

§ 1430.105 Establishment and transfer of production history for a participating dairy operation.

* * * * *

(d) Once the production history of a participating dairy operation is established as specified in paragraphs (a) or (b) of this section, the production history will be adjusted upward by FSA only to reflect any increase in the national average milk production, as determined by the Deputy Administrator, except as provided by paragraph (g) of this section.

* * * * *

(g) The established production history of a participating dairy operation may be adjusted upward once during the term of the contract for an intergenerational transfer based on the purchase of additional cows by the new family member(s). The increase in the established production history of the participating dairy operation will be determined on the basis of the national rolling herd average data for the current year in effect at the time of the intergenerational transfer and the quantity of the production history increase will be limited to an amount not more than 4 million pounds. The additional quantity of production history will receive coverage at the same elected coverage threshold and coverage percentage in effect for the participating dairy operation at the time the production history increase takes effect. Intergenerational transfers will not be allowed if the participating dairy operation's current annual production and the increase in herd size by the new member(s) is less than the operation's established production history.

(1) The dairy operation must notify FSA, using the appropriate CCC form(s), of the intergenerational transfer within 60 days of the purchase of the cows, except that for purchases made for intergenerational transfers occurring

between January 1, 2016, and June 30, 2016, the dairy operation must notify FSA during the registration and annual coverage election period for coverage year 2017, established by the Deputy Administrator. The operation has the option of the additional production history taking effect beginning either with the consecutive 2-month period following notification, or the following January 1. If the additional production history takes effect between January 1 and August 31, the premium is due September 1, as specified in § 1430.107(a)(2). If the additional production history takes effect between September 1 and December 31, the premium is due immediately.

(2) All of the items specified in this paragraph must be documented in the notification to FSA and self-certified by the current and new member(s) for the intergenerational transfer to be considered eligible for additional production history, except that intergenerational transfers that occurred in 2014 and 2015 that otherwise meet the requirements of this paragraph will be considered during the registration and annual coverage election period for coverage year 2017 established by the Deputy Administrator for the purposes of adding the new member(s) to the participating dairy operation. However, there will not be any retroactive payments based on a production history increase for the intergenerational transfer. All of the following information is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in disapproval of the intergenerational transfer.

(i) Documentation that the new member(s) joining the operation have purchased the dairy cows being added to the dairy operation;

(ii) Certification that each new member will have a share of the profits or losses from the dairy operation commensurate with such person's contributions to the dairy operation;

(iii) Certification that each new member has a significant equity ownership in the participating dairy operation at levels determined by the Deputy Administrator and announced on the FSA Web site, *www.fsa.usda.gov;*

(iv) Certification that each new member is a lineal descendant or spouse thereof of a current member of the participating dairy operation;

(v) Agreement that each new member will contribute labor in the dairy operation at a minimum of 35 hours per week or have a plan for transition to full-time, subject to FSA county committee review and approval, if only working seasonally or part-time;

(vi) Certification that the dairy operation will be the principal source of non-investment earned income for each new member; and

(vii) Documentation of the participating dairy operation's current annual marketings as of the date of the intergenerational transfer.

■ 5. Amend § 1430.106 as follows:
■ a. Revise paragraph (a);
■ b. In paragraph (b) remove the word "unit" from the second sentence; and
■ c. In paragraph (c), add a sentence at the end.

The revision and addition read as follows:

§ 1430.106 Administrative fees.

* * * * *

(a) Dairy operations must pay an initial administrative fee to CCC in the amount of $100 at the time of initial registration to participate in MPP-Dairy. Each approved participating dairy operation must also pay a $100 administrative fee each year through 2018. Annual administrative fees are due and payable to CCC through the administrative county FSA office no later than the close of business on the last day of the annual election period established by the Deputy Administrator for each applicable calendar year of margin protection coverage under MPP-Dairy. The administrative fee paid is non-refundable.

* * * * *

(c) * * * However, coverage for the applicable calendar year, at the catastrophic level only, may be reinstated if the administrative fee is paid late, effective the consecutive 2-month period following payment of the late-filed administrative fee plus applicable charges, if any, and submission to FSA of the appropriate CCC form.

■ 6. Amend § 1430.107 as follows:
■ a. In paragraph (a) introductory text, add "buy-up" after "receiving";
■ b. In paragraph (a)(1), remove "$4,";
■ c. Revise paragraphs (d), (g) introductory text, (g)(2), (h), (i), and (j);
■ d. In paragraph (l), remove the words "satisfactory in form to the Deputy Administrator and made payable to FSA" and add the words "satisfactory to FSA and made payable to CCC" in their place; and
■ e. Add paragraph (m).

The revisions and addition read as follows:

§ 1430.107 Buy-up coverage.

* * * * *

(d) The premium per cwt of milk, based on the elected percentage of coverage of production history is specified in the following table.

TABLE TO § 1430.107(d)

Coverage level (margin)	Tier 1 premium per cwt (for the covered production history that is 4 million pounds or less)	Tier 2 premium per cwt (for the part of covered production history over 4 million pounds)
$4.50	$0.010	$0.020
$5.00	0.025	0.040
$5.50	0.040	0.100
$6.00	0.055	0.155
$6.50	0.090	0.290
$7.00	0.217	0.830
$7.50	0.300	1.060
$8.00	0.475	1.360

* * * * *

(g) A participating dairy operation is required to pay the annual premium calculated as specified in paragraphs (d) and (e) of this section for the applicable calendar year, according to either of the following options:

* * * * *

(2) In total no later than September 1 of the applicable calendar year of coverage, unless otherwise specified by the Deputy Administrator.

(h) If the total premium is not paid for an applicable calendar year of coverage as specified in paragraph (g) of this section, the participating dairy operation will only be covered at catastrophic level coverage beginning with the September-October consecutive 2-month period and for the remainder of the applicable coverage year.

(i) Annual premium balances due CCC from a participating dairy operation for a calendar year of coverage must be paid in full no later than September 1 of the applicable calendar year or within a grace period determined by the Deputy Administrator, if applicable.

(j) A participating dairy operation with an unpaid premium balance for a calendar year of coverage will lose eligibility for buy-up coverage for the subsequent coverage year if the premium is not paid in full by the close of the coverage election period, and will have its current buy-up level coverage reduced to the catastrophic level, as provided in § 1430.109.

* * * * *

(m) In the case of an intergenerational transfer, the additional premium, if any, is due September 1 if the notification of the transfer is made to FSA between January 1 and September 1 of the applicable calendar year, and immediately, if the notification is made between September 2 and December 31, unless otherwise specified by the Deputy Administrator.

■ 7. Revise § 1430.108 to read as follows:

§ 1430.108 Margin protection payments.

(a) *When do MPP-Dairy payments trigger?* An MPP-Dairy payment will be made to a participating dairy operation for any consecutive 2-month period when the average actual dairy production margin for the consecutive 2-month period falls below the coverage level threshold in effect for the participating dairy operation. Payments may trigger at either the elected buy-up level if purchased by the dairy operation, or the catastrophic level.

(b) *How will payments be calculated?* Whether payments trigger at the catastrophic level or at the buy-up level, the payments will be calculated as explained in this paragraph. If the dairy operation only has catastrophic coverage or buy-up coverage at 90 percent, there will be a single calculation. If the dairy operation purchased buy-up coverage at less than 90 percent and the catastrophic level also triggers a payment, then there will be two calculations to determine the payment—first the calculation for the buy-up coverage percentage and then the calculation for the catastrophic level percentage, which is the balance of the established production history up to 90 percent; the result of these two calculations will be added together to determine the payment amount. Each calculation multiplies the payment rate times the coverage percentage times the production history divided by 6 as follows:

(1) *Payment rate.* The amount by which the coverage level exceeds the average actual dairy production margin for the 2-month period;

(2) *Coverage percentage.* The coverage percentage; and

(3) *Production history.* The production history of the dairy operation, divided by 6.

(c) *Example of payment for buy-up coverage of less than 90 percent when catastrophic level also triggers a payment.* If the dairy operation purchased buy-up level coverage at less than 90 percent of production history, then the dairy operation will receive a payment calculated at the buy-up level, plus the payment at the catastrophic level, if triggered, for the balance of 90 percent of its established production history. For example, if a producer purchased buy-up coverage at the 50 percent level, then that producer will also receive catastrophic level coverage for the next 40 percent for total coverage of 90 percent.

■ 8. Revise § 1430.109(a)(2) to read as follows:

§ 1430.109 Effect of failure to pay administrative fees or premiums.

(a) * * *

(2) Upon such failure to pay when due after initial approved registration, loses coverage under MPP-Dairy until such administrative fee or premium is paid in full, and once paid, coverage will begin with the next consecutive 2-month period. Failure to pay the premium fee when due will reduce coverage to the catastrophic level for the September and October period and November and December period in that coverage year.

* * * * *

■ 9. Revise § 1430.111 to read as follows:

§ 1430.111 Relation to RMA's LGM-Dairy Program.

(a) A producer may participate in either MPP-Dairy through a dairy operation or the LGM-Dairy program operated by RMA, but not both.

(b) Producers in dairy operations participating in MPP-Dairy must certify at the time of registration and annually during each coverage election period that they will not have an LGM-Dairy policy in effect during the calendar year the dairy operation is requesting coverage.

(c) A participating dairy operation may be required to provide proof, to the satisfaction of FSA, of the cancellation or expiration of any previous LGM-Dairy policy.

■ 10. Amend § 1430.112 by revising paragraph (b) to read as follows:

§ 1430.112 Multi-year contract.

* * * * *

(b) Failure to pay administrative fees and premiums will result in the loss or reduction of coverage, as applicable, and the participating dairy operation remains obligated to pay such administrative fees and premiums as specified in § 1430.109.

* * * * *

Val Dolcini,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2016–08482 Filed 4–12–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS–2015–0026]

RIN 0583–AD60

Classes of Poultry

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the definition and standard of identity for the "roaster" or "roasting chicken" poultry class to better reflect the characteristics of "roaster" chickens in the market today. "Roasters" or "roasting chickens" are described in terms of the age and ready-to-cook (RTC) carcass weight of the bird. Genetic changes and management techniques have continued to reduce the grow-out period and increased the RTC weight for this poultry class. Therefore, FSIS is amending the "roaster" definition to remove the 8-week minimum age criterion and increase the RTC carcass weight from 5 pounds to 5.5 pounds. FSIS is taking this action in response to a petition submitted by the National Chicken Council.

DATES: *Effective Date:* January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Staff, Office of Policy and Program Development, FSIS, USDA; Telephone (301)504–0879.

SUPPLEMENTARY INFORMATION:

Background

The Poultry Products Inspection Act (PPIA) prohibits the distribution of poultry products that are adulterated or misbranded (21 U.S.C. 458). The PPIA also authorizes the Secretary of Agriculture to prescribe, among other things, definitions and standards of identity or composition for poultry products whenever the Secretary determines that such action is necessary for the protection of the public (21 U.S.C. 457(b)). Poultry classes were established by USDA to aid in labeling poultry (9 CFR 381.170). The classes were based primarily on the age and sex of the bird. FSIS uses poultry class standards to ensure that poultry products are labeled in a truthful and non-misleading manner.

On August 19, 2015, FSIS published a proposed rule to amend the definition and standard of identity for the "roaster" or "roasting chicken" poultry class (hereafter referred to as "roasters") (80 FR 50229). Under the current regulations, a "roaster" is defined as a young chicken (between 8 and 12 weeks of age), of either sex, with a RTC weight of 5 pounds or more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than that of a broiler or fryer (9 CFR 381.170(a)(1)(iii)). FSIS published the final rule that established the current poultry class standards, including the "roaster" class, on November 3, 2011, and the rule went into effect on January 1, 2014.

On November 18, 2013, before the January 1, 2014, effective date for the 2011 final rule, the National Chicken Council (NCC) petitioned FSIS to amend the definition and standard of identity for the "roaster" chicken class to remove the 8-week minimum age requirement and to increase the RTC carcass weight to 5.5 pounds (*http://www.fsis.usda.gov/wps/wcm/connect/adf54579-7a18-4ab2-a9b5-88f1eef65332/Petition-National-Chicken-Council.pdf?MOD=AJPERES*). According to the petition, the "roaster" standard established in the 2011 final rule would detract from the orderly and efficient marketing of classes of poultry because companies would be unable to label and market chickens with the RTC weight and other physical attributes of a "roaster" as "roasters" because of the minimum age requirement. The NCC asserted that improvements in breeding and poultry management techniques that have continued since FSIS published the November 2011 final rule have enabled producers to raise chickens with the characteristics of roasters in under 8 weeks.

FSIS, in consultation with USDA's Agricultural Marketing Service (AMS), conducted a preliminary review of the NCC petition and supporting data and tentatively concluded that the petition had merit. Therefore, in the December 27, 2013, edition of the *FSIS Constituent Update,* FSIS announced that it would continue to allow chickens younger than 8 weeks of age to be labeled and marketed as "roasters" if these birds met all of the other characteristics of a "roaster" (*http://www.fsis.usda.gov/wps/wcm/connect/7f5a78cd-48f5-411b-bcf3-6f0035e72ff8/Constituent-Update-122713.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=7f5a78cd-48f5-411b-bcf3-6f0035e72ff8*). They would have to have a RTC carcass weight of 5 pounds or more; be tender-meated; and have soft, pliable, smooth-textured skin that is somewhat less flexible than that of a broiler or fryer. FSIS also stated that it intended to propose to revise the roaster definition or reaffirm the definition established in the November 2011 final rule.

In July 2014, FSIS, in consultation with AMS, completed its review of the NCC petition and concluded that the available data supported the requested action (see the August 19, 2015 proposed rule "Classes of Poultry" (80 FR 50228)). On July 23, 2014, FSIS sent a letter to the NCC informing the organization that the Agency had decided to grant the petition (*http://www.fsis.usda.gov/wps/wcm/connect/d6fba22b-271d-4204-adc6-56ab45d7b587/NCC-FSIS-Response-72314.pdf?MOD=AJPERES*). On August 19, 2015, FSIS published a proposed rule to amend the poultry class standards to define a "roaster" or "roasting chicken" as a young chicken (less than 12 weeks of age) of either sex, with a RTC carcass weight of 5.5 pounds or more, that is tender-meated with soft, pliable smooth-textured skin and breastbone cartilage that may be somewhat less flexible than that of a "broiler" or "fryer." After reviewing the comments on the proposed rule, FSIS is finalizing it without changes.

Summary of Comments and Responses

FSIS received four comments on the proposed rule, one from an organization representing the chicken industry and three from private citizens.

An organization representing the chicken industry strongly supported the proposed amendment because of the positive impacts on the poultry industry. According to the comment, such impacts include: (1) Aiding in the orderly and efficient marketing of classes of poultry in the United States, (2) eliminating the burden of periodically amending the regulation to reflect industry advancements in breeding by removing the minimum age requirement, and (3) reducing the cost for producers to efficiently raise birds. The organization also commented that efficient raising of birds would keep the cost of the final product lower for consumers because companies would not need to continue to pay for birds' feed until the birds reach eight weeks.

The following is a summary of other relevant issues raised in the comments opposed to the rule and FSIS's responses.

Comment: An individual opposed amending the "roaster" definition because the commenter believed that the change poses a health risk to the public. According to the comment, increasing the RTC weight from 5 pounds to 5.5 pounds will change the time that a "roasting chicken" will have to cook.

Response: FSIS disagrees that amending the "roaster" definition poses a health risk to the public. FSIS recommends cooking whole chicken to a safe minimum internal temperature of 165 °F (73.9 °C) as measured with a food thermometer regardless of the weight of the bird. FSIS and standard cooking guidance recommend that those preparing whole chickens check the internal temperature in the innermost part of the thigh and wing and the thickest part of the breast. For planning purposes, some consumers approximate cooking times based on the weight of the carcass. FSIS requires all poultry labels to display an accurate net weight.

Comment: Two comments from individuals stated that FSIS should maintain the 8–12 week age criteria for "roasting chickens." According to the comments, "roasters" have a superior texture and flavor spectrum because of their age and not their size. One commenter asserted that the flavor of the meat improves with more bone versus cartilage in the finished meal. Another commenter said that the older the birds, the more firm and less fatty the meat. That commenter stated that consumers pay a premium for an older bird not a larger bird.

Response: The new standard for "roasting chicken" eliminates the minimum age requirement of 8 weeks. Chickens up to 12 weeks may be labeled as "roasters." Additionally, the "roaster" standard includes physical attributes, including those the commenters identified: the birds must be tender-meated with soft, pliable, smooth-textured skin and have breastbone cartilage that may be somewhat less flexible than that of a "broiler" or "fryer." Chickens that do not meet these physical attributes do not meet the standard for "roaster."

Comment: One individual stated that to assure consumers that they are purchasing an appropriately aged bird, product labels should indicate the age of the bird at the time of slaughter. According to the commenter, through this labeling information, consumers can decide whether they are purchasing a roaster or a broiler. Another individual said that companies should not be required to label birds as "broilers" or "roasters" if the only difference between the two is size. According to the comment, the labeling should simply provide the RTC carcass weight.

Response: Requiring that poultry carcasses be labeled with the age at time of slaughter would place an undue burden on industry without providing information to consumers that will inform their purchasing decisions. Both "roasters" and "broilers" may, alternatively, be labeled as "whole young chickens" if the manufacturer prefers not to label them as "roasters" or "broilers" (9 CFR 381.117). Also, FSIS agrees with the petitioners that as long as chickens 12 weeks or younger have the appropriate characteristics, they may be labeled as "roasters."

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a "non-significant" regulatory action under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget under Executive Order (E.O.) 12866.

Economic Impact Analysis

FSIS affirms the preliminary regulatory impact analysis[1] and is finalizing the proposed rule and regulatory impact analysis without change. This final rule will not have significant costs because FSIS allows chickens younger than 8 weeks with the physical attributes of "roasters" to be labeled as "roasters."[2] The final rule will codify present practices and will not impose new requirements.

Amending the poultry class definition of "roaster" will benefit consumers by ensuring that chickens labeled as "roasters" continue to meet consumer expectations, and that the labels are truthful and not misleading. Consequently, consumers will be able to make informed purchase decisions.

Regulatory Flexibility Act Assessment

The FSIS Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule will not result in additional costs to the industry because FSIS allows chickens younger than 8 weeks with the physical attributes of "roasters" to be labeled as "roasters."

Paperwork Reduction Act

FSIS has reviewed this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and has determined that the information collection related to labeling has been approved by OMB under OMB control number 0583–0092.

FSIS does not anticipate many label changes as a result of the change to the "roaster" definition because establishments that produce chickens that comply with the "roaster" poultry class standard are already labeling these birds as "roasters."

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FSIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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[1] *http://www.fsis.usda.gov/wps/wcm/connect/3fc66d17-1b67-4e09-a4a2-5eabbc55940a/2015-0026.htm?MOD=AJPERES.*

[2] See Constituent Update: *http://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2013/ConstUpdate122713.*

List of Subjects in 9 CFR Part 381

Food grades and standards, Poultry and poultry products.

For the reasons stated in the preamble, FSIS amends 9 CFR part 381, as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

■ 2. Amend § 381.170 by revising paragraph (a)(1)(iii) to read as follows:

§ 381.170 Standards for kinds and classes, and for cuts of raw poultry.

(a) * * *

(1) * * *

(iii) *Roaster or roasting chicken.* A "roaster" or "roasting chicken" is a young chicken (less than 12 weeks of age), of either sex, with a ready-to-cook carcass weight of 5.5 pounds or more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than that of a broiler or fryer.

* * * * *

Done at Washington, DC, on: April 8, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–08488 Filed 4–12–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4811; Directorate Identifier 2015–NM–104–AD; Amendment 39–18481; AD 2016–08–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by the discovery of a number of incorrectly calibrated angle of attack (AOA) transducers installed in the stall protection system. This AD requires replacement of affected AOA transducers. We are issuing this AD to detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

DATES: This AD is effective May 18, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4811.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4811; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on November 12, 2015 (80 FR 69896) ("the NPRM").

Transport Canada Civil Aviation (TCCA), which is the aviation authority Canada, has issued Canadian Airworthiness Directive CF–2015–18, dated July 16, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> It was discovered that a number of AOA transducers installed on Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 aeroplanes were incorrectly calibrated due to a quality control problem at both the production and repair facilities. Incorrect calibration of the AOA transducer could result in a late activation of the stick pusher.
>
> This [Canadian] AD mandates the replacement of the incorrectly calibrated AOA transducer.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4811.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the one comment received. The commenter supported the NPRM.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015. This service information describes procedures for replacement of transducers with correctly calibrated AOA transducers. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 400 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $10,000 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $4,136,000, or $10,340 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–08–05 Bombardier, Inc.: Amendment 39–18481. Docket No. FAA–2015–4811; Directorate Identifier 2015–NM–104–AD.

(a) Effective Date

This AD is effective May 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10999 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15990 inclusive.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19990 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by the discovery of a number of incorrectly calibrated angle of attack (AOA) transducers installed in the stall protection system. We are issuing this AD to detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement

Within 2,500 flight hours or 12 months, whichever occurs first after the effective date of this AD, replace the AOA transducers identified in paragraph 1.A., "Effectivity," of Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015, with correctly calibrated AOA transducers, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, an AOA transducer having a part number or serial number identified in paragraph 1.A., "Effectivity," of Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–18, dated July 16, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4811.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9,

Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 31, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08346 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0068; Directorate Identifier 2015–CE–037–AD; Amendment 39–18484; AD 2016–08–08]

RIN 2120–AA64

Airworthiness Directives; SOCATA Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 92–06–10 for SOCATA Models MS 880B, MS 885, MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150ST, Rallye 150T, Rallye 235E, and Rallye 235C airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue failure of the nose landing gear wheel axle. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective May 18, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 18, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0068; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact SOCATA, Direction des services, 65921 Tarbes Cedex 9, France; phone: +33 (0) 5 62 41 73 00; fax: +33 (0) 5 62 41 76 54; email: *info@socata.daher.com;* Internet: *http://www.tbm.aero/.* For the United States, contact SOCATA NORTH AMERICA, North Perry Airport, 601 NE 10 Street, Pompano Beach, Florida 33060; phone: (954) 366–3331; Internet: *http://www.socatanorthamerica.com/default.htm.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–0068.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to SOCATA Models MS 880B, MS 885, MS 894A, MS 893A, MS 892A–150, MS 892E–150, MS 893E, MS 894E, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. That NPRM was published in the **Federal Register** on January 15, 2016 (81 FR 2134), and proposed to supersede AD 92–06–10, Amendment 39–8190 (57 FR 8063; March 6, 1992) ("92–06–10").

The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states that:

> A nose landing gear (NLG) wheel axle rupture occurred in service. The results of the technical investigation revealed that this failure was due to premature wear.
>
> This condition, if not detected and corrected, could lead to cracks in the axle and detachment of axle and wheel, possibly resulting in failure of the NLG with consequent damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, DGAC France issued AD 91–163(A) (later revised twice) to require repetitive detailed inspections (DET) of the NLG wheel axle and replacement of the NLG wheel axle attachment screws in accordance with the instructions of SOCATA Service Bulletin (SB) 150–32.
>
> Since DGAC France AD 91–163(A)R2 was issued, new findings led to an adjustment of the inspection interval. Consequently, SOCATA issued SB 150–32, now at Revision 3.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2016-0068-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 2134, January 15, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 2134, January 15, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 2134, January 15, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed Daher-Socata Mandatory Service Bulletin SB 150–32, Revision 3, dated September 2015. The service bulletin describes procedures for inspection of the nose gear wheel axle. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

Costs of Compliance

We estimate that this AD will affect 77 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $500 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $103,950, or $1,350 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $1,450, for a cost of $1,705 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0068; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–8190 (57 FR 8063; March 6, 1992) and adding the following new AD:

2016–08–08 SOCATA: Amendment 39–18484; Docket No. FAA–2016–0068; Directorate Identifier 2015–CE–037–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 18, 2016.

(b) Affected ADs

This AD supersedes AD 92–06–10 Amendment 39–8190 (57 FR 8063; March 6, 1992) ("AD 92–06–10").

(c) Applicability

This AD applies to SOCATA Models MS 880B, MS 885, MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150ST, Rallye 150T, Rallye 235E, and Rallye 235C airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue failure of the nose landing gear wheel axle. We are issuing this AD to detect and correct chafing and cracking of the nose gear wheel axle, which could lead to failure of the nose landing gear with consequent damage to the airplane and/or occupants.

(f) Actions and Compliance

Do the actions in paragraphs (f)(1) through (f)(5) of this AD, including all subparagraphs. If the initial actions of paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD have already been done before the effective date of this AD, then do the repetitive actions of these paragraphs at the specified times.

(1) Do a detailed visual inspection of the intersection between the axle radius and the nose landing gear fork area for chafing at whichever occurs later in paragraph (f)(1)(i) or (f)(1)(ii) of this AD and repetitively thereafter at intervals not to exceed 200 hours time-in-service (TIS) following Daher-Socata Mandatory Service Bulletin SB 150–32, Revision 3, dated September 2015:

(i) Upon accumulating 200 hours TIS since the airplane's first flight or 200 hours TIS since the last inspection required by AD 92–06–10; or

(ii) Within the next 50 hours TIS after May 18, 2016 (the effective date of this AD) or within 500 hours TIS since the last inspection required by AD 92–06–10, whichever occurs first.

(2) Do a dye penetrant inspection on the nose wheel axle for cracks, distortion, and nicks or wear at whichever occurs later in paragraph (f)(2)(i) or (f)(2)(ii) of this AD and repetitively thereafter at intervals not to exceed 200 hours time-in-service (TIS) following Daher-Socata Mandatory Service Bulletin SB 150–32, Revision 3, dated September 2015:

(i) Upon accumulating 200 hours TIS since the airplane's first flight or 200 hours TIS since the last inspection required by AD 92–06–10; or

(ii) Within the next 50 hours TIS after May 18, 2016 (the effective date of this AD) or within 500 hours TIS since the last inspection required by AD 92–06–10, whichever occurs first.

(3) If any cracks or damage is found in any inspection required by paragraphs (f)(1) or (f)(2) in this AD, contact SOCATA for FAA-approved repair or replacement instructions approved specifically for this AD and, before further flight, implement those instructions. Use the contact information found in paragraph (j) of this AD to contact SOCATA.

(4) Replace the nose landing gear wheel axle attachment screws with new screws at whichever occurs later in paragraph (f)(4)(i) or (f)(4)(ii) of this AD following Daher-Socata Mandatory Service Bulletin SB 150–32, Revision 3, dated September 2015:

(i) Upon accumulating 2,000 hours TIS since airplane's first flight or 2,000 hours TIS since last nose landing gear wheel attachment screw replacement with new screws; or

(ii) Within 50 hours TIS since April 17, 1992 (the effective date retained from AD 92–06–10).

(5) After May 18, 2016 (the effective date of this AD), a used nose landing gear or a used nose landing gear wheel axle may be installed provided it has been inspected and found free of cracks and/or damage and the nose landing gear wheel axle attachment screws have been replaced with new screws as specified in paragraphs (f)(1), (f)(2), and (f)(4) of this AD.

(g) Credit for Actions Accomplished in Accordance With Previous Service Information

This AD allows credit for the inspections required in paragraph (f)(1) and (f)(2) of this AD, if done before May 18, 2016 (the effective date of this AD), following Daher-Socata Mandatory Service Bulletin SB 150–32, Revision 2, dated January 1994.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD 2015–0203, dated October 7, 2015; and Daher-Socata Mandatory Service Bulletin SB 150–32, Revision 2, dated January 1994, for related information. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2016-0068-0002.*

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Daher-Socata Mandatory Service Bulletin SB 150–32, Revision 3, dated September 2015.

(ii) Reserved.

(3) For SOCATA service information identified in this AD, contact SOCATA, Direction des services, 65921 Tarbes Cedex 9, France; phone: +33 (0) 5 62 41 73 00; fax: +33 (0) 5 62 41 76 54; email: *info@socata.daher.com;* Internet: *http://www.tbm.aero/.* For the United States, contact SOCATA NORTH AMERICA, North Perry Airport, 601 NE 10 Street, Pompano Beach, Florida 33060; phone: (954) 366–3331; Internet: *http://www.socatanorthamerica.com/default.htm.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0068.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on April 4, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08262 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–5914; Directorate Identifier 2014–SW–056–AD; Amendment 39–18472; AD 2016–07–27]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (formerly Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model SA341G and SA342J helicopters. This AD requires repetitive inspections of a certain part-numbered main rotor hub torsion bar (torsion bar). This AD was prompted by several cases of corrosion in the metal strands of the torsion bar. The actions of this AD are intended to detect corrosion and prevent failure of the torsion bar, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: This AD is effective May 18, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of May 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5914.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5914; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 10101 Hillwood Pkwy, Fort Worth, Texas 76177; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On November 19, 2015, at 80 FR 72390, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Model SA341G and SA342J helicopters with a torsion bar part number 704A33633274 installed. The NPRM proposed to require removing and performing repetitive inspections of each torsion bar for a crack in the polyurethane (PU) coating, the dimension of the angle between the bushings, corrosion on the inside diameter of each bushing, the thickness of each bushing, the size of the inside diameter of each bushing, and missing varnish on the two faces of each bushing. The NPRM also proposed to require replacing the torsion bar before further flight if there is a crack in the PU coating of a torsion bar that matches or exceeds the damage criteria, if the angle of the torsion bar is 7 degrees or more, if any corrosion on a bushing cannot be removed by rubbing it with an abrasive pad, if the thickness of a bushing is less than 37.520 mm (1.477 in), or if the diameter of a bushing is larger than 21,040 mm (.828 in). If varnish is missing from more than 15 percent of the surface area from a face of a bushing, the NPRM proposed to require removing all varnish, finishing with an abrasive pad, and applying a coat of paint to the face of the bushing. The proposed requirements were intended to detect corrosion and prevent failure of the torsion bar, loss of a main rotor blade, and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2014–0216, dated September 24, 2014, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Model SA341G and SA342J helicopters. EASA advises that several cases of cracks were found on the PU coating of part-numbered 704A33633274 torsion bars installed on military Model SA341 helicopters. EASA states that these parts can also be installed on civilian Model SA341 and SA342 helicopters. According to EASA, analysis of the cracked torsion bars showed small areas of superficial corrosion on the strands inside the bars can also develop during the manufacturing process. EASA states that cracking of the PU coating near these areas and the associated penetration of water can lead to further and deeper development of the corrosion. EASA advises that this condition, if not detected and corrected, allows water to penetrate into the torsion bar causing corrosion and failure of the metal strands inside the bar. Failure of the metal strands could lead to torsion bar failure, resulting in an in-flight loss of a main rotor blade and consequent loss of control of the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (80 FR 72390, November 19, 2015).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Interim Action

We consider this AD to be an interim action. If final action is later identified, we might consider further rulemaking.

Differences Between This AD and the EASA AD

This AD requires you to replace a torsion bar instead of returning it to the manufacturer for examination.

Related Service Information Under 1 CFR Part 51

Eurocopter (now Airbus Helicopters) has issued Gazelle Inspection—Check 65.12.607, "Main Rotor Head: Torsion Tie-Back Check (Post MOD 076171)," dated August 2008, of the Eurocopter Gazelle Helicopter Maintenance Manual, Tome 1, which describes inspecting the torsion bars for a crack in the PU coating and for corrosion and thickness of the bushings.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

Airbus Helicopters has also issued Alert Service Bulletin No. SA341/SA342–05.40, Revision 0, dated April 28, 2014 (ASB), for Model SA341G and SA342J helicopters certificated by the FAA, and military Model SA341B, C, D, E, F, and H and SA342K, L, L1, M, M1, and Ma helicopters. The ASB specifies repetitively inspecting the torsion bars in accordance with certain work cards, including work card 65.12.607. These inspections are part of Airbus Helicopters' current maintenance program, and the ASB revises the compliance time interval for the inspections.

Costs of Compliance

We estimate that this AD affects 33 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. We estimate $85 per work-hour for labor. We estimate 8 work-hours to inspect each helicopter at an estimated cost of $680 per helicopter and $22,440 for the U.S. fleet per inspection cycle. Replacing a torsion bar will cost $7,020 for required parts; no additional labor is necessary.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on helicopters identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–07–27 Airbus Helicopters (formerly Eurocopter France): Amendment 39–18472; Docket No. FAA–2015–5914; Directorate Identifier 2014–SW–056–AD.

(a) Applicability

This AD applies to Model SA341G and SA342J helicopters with a main rotor head torsion bar (torsion bar) part number 704A33633274 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the coating of the torsion bar resulting in corrosion. This condition could result in failure of a torsion bar, loss of a main rotor blade, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective May 18, 2016.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) For each torsion bar with less than 5 years since the first date of installation on any helicopter, within the compliance time shown in Table 1 to paragraph (e)(1) of this AD:

(i) Remove the torsion bar and, using a magnifying glass with a maximum magnification level of 10X, visually inspect for a crack in the polyurethane (PU) coating of the torsion bar as depicted in Figure 1 of Gazelle Inspection—Check 65.12.607, "Main Rotor Head: Torsion Tie-Back Check (Post MOD 076171)," dated August 2008, of the Eurocopter Gazelle Helicopter Maintenance Manual, Tome 1. This type of task is commonly called a "work card" and will be referenced in this AD as "the work card." Consider two cracks that are less than 5 mm (.196 in) apart as a single crack. If there is a crack in the PU coating that is more than 5 mm (.196 in), replace the torsion bar before further flight. Do not rework the PU coating of the torsion bar in any way.

(ii) Inspect the angle, dimension alpha, as depicted in View on Arrow F of Figure 1 of the work card. If the angle is 7 or more degrees, replace the torsion bar before further flight.

(iii) Inspect each bushing for corrosion on the inside diameter. If any corrosion cannot be removed by rubbing it with an abrasive pad, replace the torsion bar before further flight.

(iv) Using an outside micrometer, measure the thickness, dimension a, of each bushing as depicted in Detail AA of Figure 1 of the work card. If the thickness is less than 37.520 mm (1.477 in), replace the torsion bar before further flight.

(v) Using an inside micrometer, measure the inside diameter, dimension b, of each bushing as depicted in Detail AA of Figure 1 of the work card. If the diameter is larger than 21.040 mm (.828 in), replace the torsion bar before further flight.

(vi) Inspect the two faces of each bushing for missing varnish. If varnish is missing from more than 15% of the surface area on a face of a bushing, before further flight, remove all varnish using 400-grit abrasive paper. Finish with an abrasive pad and apply a coat of P05 paint to the face of the bushing.

TABLE 1 TO PARAGRAPH (e)(1)

Time accumulated on torsion bar	Compliance time
(i) Less than 320 hours time-in-service (TIS) since new and has never been inspected in accordance with Airbus Helicopters 341G—342J Airworthiness Limitations, Revision 18, dated June 2014 (limitations inspection).	Before accumulating 420 hours TIS since new or within 24 months since the date of first installation on any helicopter, whichever occurs first.
(ii) 320 or more hours TIS since new and has never had a limitations inspection.	Within 100 hours TIS, or before accumulating 600 hours TIS since new, or within 24 months since the date of first installation on any helicopter, whichever occurs first.
(iii) Less than 320 hours TIS since the last limitations inspection	Before accumulating 420 hours TIS since the last limitations inspection or within 24 months since the last limitations inspection, whichever occurs first.
(iv) 320 or more hours TIS since the last limitations inspection	Within 100 hours TIS, or before accumulating 600 hours TIS since the last limitations inspection, or within 24 months since the last limitations inspection, whichever occurs first.

(2) For each torsion bar with 5 or more years since the first date of installation on any helicopter, within the compliance time shown in Table 2 to paragraph (e)(2) of this AD, do the inspections required by paragraphs (e)(1)(i) through (vi) of this AD.

TABLE 2 TO PARAGRAPH (e)(2)

Time accumulated on torsion bar	Compliance time
(i) Less than 320 hours TIS since new, and less than 6 months since the date of first installation on any helicopter, and has never had a limitations inspection.	Before accumulating 420 hours TIS since new or within 12 months since the date of first installation on any helicopter, whichever occurs first.
(ii) 320 or more hours TIS since new or more than 6 months since the date of first installation on any helicopter, and has never had a limitations inspection.	Within 100 hours TIS, or within 6 months, or before accumulating 600 hours TIS since new, or within 24 months since the date of first installation on any helicopter, whichever occurs first.
(iii) Less than 320 hours TIS since last limitations inspection and less than 6 months since the last limitations inspection.	Before accumulating 420 hours TIS since last limitations inspection or 12 months since last limitations inspection, whichever occurs first.
(iv) 320 or more hours TIS since last limitations inspection or 6 or more months since the last limitations inspection.	Within 100 hours TIS, or within 6 months, or before accumulating 600 hours TIS since the last limitations inspection, or within 24 months since the last limitations inspection, whichever occurs first.

(3) Repeat the inspections required by paragraphs (e)(1)(i) through (vi) of this AD as follows:

(i) For torsion bars with less than 6 years since the date of installation on any helicopter, at intervals not to exceed 420 hours TIS or 24 months, whichever occurs first.

(ii) For torsion bars with 6 or more years since the date of installation on any helicopter, at intervals not to exceed 420 hours TIS or 12 months, whichever comes first.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 10101 Hillwood Pkwy, Fort

Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Airbus Helicopters Alert Service Bulletin ASB No. SA341/SA342–05.40, Revision 0, dated April 28, 2014, which is not incorporated by reference, contains additional information about the subject of this final rule. For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2014–0216, dated September 24, 2014. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–5914.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Main Rotor.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Gazelle Inspection—Check 65.12.607, “Main Rotor Head: Torsion Tie-Back Check (Post MOD 076171),” dated August 2008, of the Eurocopter Gazelle Helicopter Maintenance Manual, Tome 1.

(ii) Reserved.

(3) For Eurocopter service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on March 31, 2016.

James A. Grigg,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–07979 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3147; Directorate Identifier 2014–NM–094–AD; Amendment 39–18479; AD 2016–08–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. This AD was prompted by reports of fractured forward attach fittings of the inboard flap outboard aft flap track. The fractured fittings were determined to be the result of corrosion pits forming on the inside diameter of the fittings. This AD requires an inspection for the affected part number and serial number of the main flap; various additional repetitive inspections of the fitting, if necessary; and replacement of the fitting or nested bushing installation, if necessary, which would terminate the inspections. This AD also provides an optional terminating action for the repetitive inspections. We are issuing this AD to detect and correct fracture of the fitting, which could result in the loss of the inboard aft flap and could lead to a punctured fuselage, causing injury to the flightcrew and passengers, and damage to the airplane.

DATES: This AD is effective May 18, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3147.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3147; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric Lin, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6412; fax: 425–917–6590; email: *Eric.Lin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. The NPRM published in the **Federal Register** on August 25, 2015 (80 FR 51491) (“the NPRM”). The NPRM was prompted by reports of fractured forward attach fittings of the inboard flap outboard aft flap track. The fractured fittings were determined to be the result of corrosion pits forming on the inside diameter of the fittings. The NPRM proposed to require an inspection for the affected part number and serial number of the main flap; various additional repetitive inspections of the fitting, if necessary; and replacement of the fitting or nested bushing installation, if necessary, which would terminate the inspections. The proposed AD also provided an optional terminating action for the repetitive inspections. We are issuing this AD to detect and correct fracture of the fitting, which could result in the loss of the inboard aft flap and could lead to a punctured fuselage, causing injury to the flightcrew and passengers, and damage to the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment. Benjamin Kerensa commented that he supports the NPRM.

Request To Change Terminology

Boeing requested that we change the phrase "inboard flap of the main flap" to "main flap of the inboard flap assembly" in paragraphs (g) and (h) of the proposed AD. Boeing stated that this would clarify the inspection location.

We agree with the commenter's request for the reason provided by the commenter. We have revised paragraphs (g) and (h) of this AD accordingly.

Request To Clarify Requirements of a Certain Terminating Action

Boeing requested that we revise the terminating action specified in paragraph (k)(1) of the proposed AD. Boeing recommended that at the end of paragraph (k)(1) of the proposed AD, we add the following language, "Prior to accomplishing this option, the inspections of paragraph (h) must be accomplished and no cracking must have been found during that inspection." Boeing commented that the bushing replacement is only a terminating action if the fitting has been verified to be crack free.

We agree to clarify the terminating action. As specified in Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, if cracking is found during an inspection that is part of the terminating action, a fitting replacement must be done instead of the terminating action. In addition, Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, specifies that if corrosion cannot be removed during the terminating action, a fitting replacement must be done instead of the terminating action.

Therefore, we have revised paragraph (k)(1) of this AD to specify that the terminating action is acceptable provided no cracking is found during any inspection specified in Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, and all corrosion has been removed.

We have also clarified the terminating actions specified in paragraphs (h), (i), (j), (k)(1), (k)(2), and (k)(3) of this AD to specify the terminating actions apply only to that fitting on which the terminating action is done.

In addition, we have clarified the actions specified in paragraphs (i)(3)(i), (i)(3)(ii), and (i)(3)(iii) of this AD by specifying the actions include doing all applicable related investigative actions. Also, we have clarified the actions specified in paragraphs (j)(1) and (j)(2) of this AD by specifying the actions include doing all applicable related investigative and corrective actions.

Request To Clarify Terminating Action Is an Option to the Inspections

Boeing and American Airlines (AA) requested that we clarify that the terminating action can be done instead of the inspections. AA commented to revise the terminating action paragraph to state the following:

> If any inboard flap of the main flap having an affected part number and serial number is found during the inspection required by paragraph (g) of this AD: Except as provided by paragraph (l) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, do the terminating action in paragraph (k)(1), (k)(2), or (k)(3) of this AD or do the inspections specified in paragraph (h)(1) or (h)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Special attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, until a terminating action in paragraph (k)(1), (k)(2), or (k)(3) of this AD is done.

AA commented that this change would align the proposed rule with paragraph 1.E., "Compliance," table 1 and table 2, of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014. AA also stated that this would clearly indicate that the terminating action would preclude having to accomplish first the initial inspection requirement in paragraph (h) of the proposed AD. Boeing requested that we add a sentence to the end of paragraph (h) to specify that the inspections are not required for any affected inboard flap assembly where one of the terminating actions specified in paragraph (k)(1), (k)(2), or (k)(3) of the proposed AD have been done.

We agree with the commenters' request. We have revised paragraph (h) of this AD to clarify that the terminating actions may preclude the initial inspections because rework or replacement of the parts prevent the unsafe condition.

Request To Clarify the Applicability

Delta Airlines (DAL) requested that we clarify whether paragraph (c) of the proposed AD is intended for all Model 777–200, –200LR, –300, and –300ER series airplanes, or all Model 777–200, –200LR, –300 and –300ER series airplanes, identified as Groups 1, 2, and 4 airplanes in Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

DAL stated that paragraph (c) of the proposed AD does not contain Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, to identify the airplane's applicability for the proposed AD. DAL commented that in the proposed rule under "Differences Between This Proposed AD and the Service Information," the airplane's applicability is stated. DAL also stated that the same paragraph states that the proposed AD is applicable only to Groups 1, 2, and 4 airplanes (Model 777–200, –200LR, –300 and –300ER series airplanes) specified in Boeing Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014. DAL commented that a review of the "Compliance" paragraph in the service information indicates that the FAA will possibly release an AD for airplanes in Groups 1, 2, and 4.

We agree with the commenter's request to clarify the applicability of this AD. This AD applies to all Model 777–200, –200LR, –300, and –300ER series airplanes as specified in paragraph (c) of this AD. The description of Groups 1, 2, and 4 airplanes in section 1.A., "Effectivity," of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, specifies Model 777–200, –200LR, –300, and –300ER series airplanes. Additionally, as noted in the service information, the table of variable numbers given in section 1.A., "Effectivity," only reflects up to line number 1322, and affected airplanes after line number 1322 will be added to the profile page of MyBoeingFleet.com. Therefore, this AD applies to all Model 777–200, –200LR, –300, and –300ER series airplanes. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014. The service information describes procedures for an inspection for the affected part number and serial number of the main flap; various additional repetitive inspections of the fitting, if necessary; and replacement of the fitting or nested bushing installation, if necessary, which would terminate the inspections. The service information also describes an optional terminating action for the repetitive inspections. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 148 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection to determine the part number.	3 work-hours × $85 per hour = $255	$0	$255	$37,740.
Additional Inspections	Up to 7 work-hours × $85 per hour = $595, per cycle.	0	Up to $595, per cycle	Up to $88,060, per cycle.

We estimate the following costs to do any necessary replacements that will be required based on the results of the inspection. The nested bushing installation of the attach fitting and the fitting replacement are also optional terminating actions. We have no way of determining the number of aircraft on which these actions might be done.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Nested bushing installation of the attach fitting	40 work-hours × $85 per hour = $3,400	$45	$3,445.
Fitting replacement	73 work-hours × $85 per hour = $6,205	7,400	13,605.

According to the manufacturer, all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–08–03 The Boeing Company: Amendment 39–18479; Docket No. FAA–2015–3147; Directorate Identifier 2014–NM–094–AD.

(a) Effective Date

This AD is effective May 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of fractured forward attach fittings of the inboard flap outboard aft flap track. The fractured fittings were determined to be the result of corrosion pits forming on the inside diameter of the fittings. We are issuing this AD to detect and correct fracture of the fitting, which could result in the loss of the inboard aft flap and could lead to a punctured fuselage, causing injury to the flightcrew and passengers, and damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection To Determine the Part Number

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, except as provided by paragraph (l) of this AD: Do an inspection of the main flap of the inboard flap assembly for affected part and serial numbers, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the inboard flap can be conclusively determined from that review.

(h) Additional Inspections

If any main flap of the inboard flap assembly having an affected part number and serial number is found during the inspection required by paragraph (g) of this AD: Except as provided by paragraph (l) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, do the terminating action specified in paragraph (k)(1), (k)(2), or (k)(3) of this AD, or do the inspections specified in paragraph (h)(1) or (h)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, until a terminating action in paragraph (k)(1), (k)(2), or (k)(3) of this AD is done. Accomplishing a terminating action specified in paragraph (k)(1), (k)(2), or (k)(3) of this AD terminates the inspections required by this paragraph for that fitting only.

(1) At the forward attach fitting of the aft flap track of the inboard flap: Do a detailed inspection for cracking and bushing migration, and a high frequency eddy current inspection for cracking, in accordance with Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

(2) At the forward attach fitting of the aft flap track of the inboard flap: Do a detailed inspection for cracking and bushing migration, and an ultrasound inspection for cracking, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

(i) Corrective Action for Bushing Migration

If any bushing migration but no cracking is found during any inspection required by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, do the actions specified in paragraphs (i)(1) through (i)(3) of this AD. Accomplishment of a terminating action specified in paragraph (i)(3) or (k) of this AD terminates the actions required by this paragraph for that fitting only.

(1) Apply corrosion inhibiting compound BMS 3–23, Type II, around the bushing flanges on each side of the fitting, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014. Re-apply the corrosion inhibiting compound at the time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

(2) Repeat the inspections specified in paragraph (h)(1) or (h)(2) of this AD, except inspect for cracking only.

(3) Do a terminating action specified in paragraph (i)(3)(i), (i)(3)(ii), or (i)(3)(iii) of this AD.

(i) Install a nested bushing to the forward attach fitting of the aft flap track of the inboard flap, including doing all applicable related investigative actions, in accordance with Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

(ii) Replace the forward attach fitting of the aft flap track of the inboard flap with an aluminum fitting, including doing all applicable related investigative actions, in accordance with Part 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

(iii) Replace the forward attach fitting of the aft flap track of the inboard flap with a titanium fitting, including doing all applicable related investigative actions, in accordance with Part 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

(j) Corrective Actions for Cracking

If any cracking is found during any inspection required by paragraph (h) or (i)(3) of this AD: At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, do a terminating action specified in paragraph (j)(1) or (j)(2) of this AD. Replacement of the forward attach fitting as specified in paragraph (j)(1) or (j)(2) of this AD terminates the actions in this AD for that fitting only.

(1) Replace the forward attach fitting of the aft flap track of the inboard flap with an aluminum fitting, including doing all applicable related investigative and corrective actions, in accordance with Part 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

(2) Replace the forward attach fitting of the aft flap track of the inboard flap with a titanium fitting, including doing all applicable related investigative and corrective actions, in accordance with Part 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

(k) Optional Terminating Actions

(1) Installation of the nested bushing to the forward attach fitting of the aft flap track of the inboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, terminates the requirements of this AD for that fitting only, provided no cracking is found during any inspection specified in Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, and all corrosion has been removed.

(2) Replacement of the forward attach fitting of the aft flap track of the inboard flap with an aluminum fitting, in accordance with Part 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, terminates the requirements of this AD for that fitting only.

(3) Replacement of the forward attach fitting of the aft flap track of the inboard flap with a titanium fitting, in accordance with Part 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, terminates the requirements of this AD for that fitting only.

(l) Exception to the Service Information

Where Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(m) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraphs (h)(1) and (h)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–57–0094, dated January 29, 2014, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using Boeing Multi Operator Message MOM–MOM–13–

0137–01B, dated February 21, 2013, which is not incorporated by reference in this AD.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (o)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (n)(4)(i) and (n)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(o) Related Information

(1) For more information about this AD, contact Eric Lin, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6412; fax: 425–917–6590; email: *Eric.Lin@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(3) and (p)(4) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 777–57–0094, Revision 1, dated November 5, 2014.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 31, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08359 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2959; Directorate Identifier 2015–NM–008–AD; Amendment 39–18470; AD 2016–07–25]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This AD was prompted by reports indicating that the ram air turbine (RAT) assembly may fail to operate if deployed at low airspeeds. This AD requires replacing either the RAT pump and control module assembly or the entire RAT assembly. We are issuing this AD to prevent failure of the RAT assembly to operate at low air speeds. The volume fuse on the RAT assembly may be activated in-flight before the RAT is deployed. This may lead to improper pump hydraulic pressure offloading when the RAT is needed. Failure of the RAT to operate in an all engine out event would result in loss of control of the airplane.

DATES: This AD is effective May 18, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2959.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2959; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sean J. Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *sean.schauer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8 airplanes. The NPRM published in the **Federal Register** on July 24, 2015 (80 FR 43972) (“the NPRM”). The NPRM was prompted by reports indicating that the RAT assembly may fail to operate if deployed at low airspeeds. The NPRM proposed to require replacing either the RAT pump and control module assembly or the entire RAT assembly. We are issuing this AD to prevent failure of the RAT assembly to operate at low air speeds. The volume fuse on the RAT assembly may be activated in-flight before the RAT is deployed. This may lead to improper pump hydraulic pressure offloading when the RAT is needed. Failure of the RAT to operate in an all engine out event would result in loss of control of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

United Airlines stated that it supports the NPRM.

Request for Correction of RAT Minimum Design Speed

Boeing requested that we revise the NPRM to state that the RAT minimum design speed is 120 knots, not 130 knots. Boeing explained that the RAT will remain operational as the airplane decelerates through the minimum RAT design speed of 120 knots, not 130 knots. Boeing expressed that the performance of the RAT was shown to meet the Boeing Model 787 requirement that specifies 120 knots as the minimum RAT design speed.

We agree that the RAT will remain operational as the airplane decelerates through the minimum RAT design speed of 120 knots, not 130 knots. However, that specific information is in the preamble of the NPRM, which is not restated in this final rule. Therefore, no changes have been made to this final rule in this regard.

Request To Revise Compliance Time

The Air Line Pilots Association requested that we revise the compliance time of 36 months, to 12 months because the 36 months compliance time is too long, and that 12 months would be more suitable.

We disagree with the request to revise the compliance time. No data was submitted to substantiate the request made by the commenter. Engineering analysis indicates that 36 months is an appropriate compliance time to complete the required actions of this AD, and provides an acceptable level of safety. Most ADs, including this one, permit operators to accomplish the requirements of an AD at a time earlier than the specified compliance time; therefore, an operator may choose to perform the actions required by this AD earlier then the specified compliance time. We have made no changes to this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB290015–00, Issue 002, dated November 25, 2014. The service information describes procedures for replacing either the RAT pump and control module assembly or the RAT assembly including an installation test and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 12 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	7 work-hours × $85 per hour = $595.	N/A	$595	$7,140

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–07–25 The Boeing Company: Amendment 39–18470; Docket No. FAA–2015–2959; Directorate Identifier 2015–NM–008–AD.

(a) Effective Date

This AD is effective May 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB290015–00, Issue 002, dated November 25, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic Power.

(e) Unsafe Condition

This AD was prompted by reports indicating that the ram air turbine (RAT) assembly may fail to operate if deployed at low airspeeds. We are issuing this AD to prevent failure of the RAT assembly to operate at low air speeds. The volume fuse on the RAT assembly may be activated in-flight before the RAT is deployed. This may lead to improper pump hydraulic pressure offloading when the RAT is needed. Failure of the RAT to operate in an all engine out event would result in loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement

Within 36 months after the effective date of this AD, replace the RAT pump and control module assembly or the RAT assembly, including an installation test and applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB290015–00, Issue 002, dated November 25, 2014. Do all applicable corrective actions before further flight.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB290015–00, Issue 001, dated September 4, 2014, which is not incorporated by reference in this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Sean J. Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM 130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *sean.schauer@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin B787–81205–SB290015–00, Issue 002, dated November 25, 2014.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 26, 2016.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07839 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4810; Directorate Identifier 2015–NM–090–AD; Amendment 39–18475; AD 2016–07–30]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200, –200 Freighter, and –300 series airplanes, and all Airbus Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by a report of blockage of Angle of Attack (AOA) probes during climb, leading to activation of the Alpha Protection (Alpha Prot) while the Mach number increased. This activation could cause a continuous nose-down pitch rate that cannot be stopped with backward sidestick input, even in the full backward position. For certain airplanes, this AD requires replacing certain AOA sensors (probes) with

certain new AOA sensors. For certain other airplanes, this AD also requires inspections and functional heat testing of certain AOA sensors for discrepancies, and replacement if necessary. We are issuing this AD to prevent erroneous AOA information and Alpha Prot activation due to blocked AOA probes, which could result in a continuous nose-down command and loss of control of the airplane.

DATES: This AD becomes effective May 18, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4810.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-4810*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and all Airbus Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on November 12, 2015 (80 FR 69899) (“the NPRM”).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0134, dated July 8, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and all Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

> An occurrence was reported where an Airbus A321 aeroplane encountered a blockage of two Angle of Attack (AOA) probes during climb, leading to activation of the Alpha Protection (Alpha Prot) while the Mach number increased. The flight crew managed to regain full control and the flight landed uneventfully. It was determined that the affected AOA probes are also fitted on A330 and A340 aeroplanes.
>
> When Alpha Prot is activated due to blocked AOA probes, the flight control laws order a continuous nose down pitch rate that, in a worst case scenario, cannot be stopped with backward sidestick inputs, even in the full backward position. If the Mach number increases during a nose down order, the AOA value of the Alpha Prot will continue to decrease. As a result, the flight control laws will continue to order a nose down pitch rate, even if the speed is above minimum selectable speed, known as VLS.
>
> This condition, if not corrected, could result in loss of control of the aeroplane.
>
> Investigation results indicated that aeroplanes equipped with certain UTC Aerospace (UTAS, formerly known as Goodrich) AOA sensors, or equipped with certain SEXTANT/THOMSON AOA sensors, appear to have a greater susceptibility to adverse environmental conditions than aeroplanes equipped with the latest Thales AOA sensor, Part Number (P/N) C16291AB, which was designed to improve AOA indication behaviour in heavy rain conditions.
>
> Having determined that replacement of these AOA sensors is necessary to achieve and maintain the required safety level of the aeroplane, EASA issued [an AD ***], to require modification of the aeroplanes by replacement of the affected P/N sensors, and, after modification, prohibits (re-) installation of those P/N AOA sensors. That [EASA] AD also required repetitive detailed visual inspections (DET) and functional heating tests of certain Thales AOA sensors and provided an optional terminating action for those inspections.
>
> Since EASA AD 2015–0089 was issued, based on further analysis results, Airbus issued Operators Information Transmission (OIT) Ref. 999.0017/15 Revision 1, instructing operators to speed up the removal from service of UTAS P/N 0861ED2 AOA sensors.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA [AD ***], which is superseded, but reduces the compliance times for aeroplanes with UTAS P/N 0861ED2 AOA sensors installed.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4810.

Actions Since the NPRM Was Issued

Since we issued the NPRM Airbus has issued the following service information:

- Service Bulletin A330–34–3215, Revision 03, dated July 23, 2015.
- Service Bulletin A340–34–4215, Revision 03, dated July 27, 2015.
- Service Bulletin A340–34–5062, Revision 02, dated July 24, 2015.

Explanation of Certain Changes to the NPRM

We have revised paragraph (j) of this AD to refer to this revised service information.

We have also added a new paragraph (l) to this AD, and reidentified subsequent paragraphs, to give credit for doing the actions using the following service information:

- Airbus Service Bulletin A330–34–3215, Revision 02, dated March 29, 2010.
- Airbus Service Bulletin A340–34–4215, Revision 02, dated March 29, 2010.
- Airbus Service Bulletin A340–34–5062, Revision 01, dated March 29, 2010.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA’s response.

Request To Reduce Certain Compliance Times

Airbus asked that we reduce the compliance time from 22 months to 12 months for P/N 0861ED removal, and from 7 months to 3 months for P/N 0861ED2 removal.

We do not agree with the request, as no supporting data was provided by the commenter. We contacted Airbus to determine if there was a justification for reducing the compliance times specified in the proposed AD. We noted that reducing the compliance times would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments subsequently received, and eventually issuing a final rule. Airbus stated it concurs with keeping the compliance times specified in the proposed AD. We have determined that further delay of this final rule is not appropriate. However, if additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue.

In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of replacing the AOA sensors, as well as the compliance times required by the EASA AD. In consideration of these factors, we have determined that the compliance time, as proposed, represents an appropriate time in which the AOA sensors can be replaced in a timely manner within the fleet, while still maintaining an adequate level of safety. Most ADs, including this one, permit operators to accomplish the requirements of an AD at a time earlier than the specified compliance time; therefore, an operator may choose to replace the AOA sensors earlier. We have not changed this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Service Bulletin A330–34–3215, Revision 03, dated July 23, 2015.
- Service Bulletin A330–34–3228, dated October 7, 2009.
- Service Bulletin A330–34–3315, dated March 26, 2015.
- Service Bulletin A340–34–4215, Revision 03, dated July 27, 2015.
- Service Bulletin A340–34–4234, dated October 7, 2009.
- Service Bulletin A340–34–4294, dated March 26, 2015.
- Service Bulletin A340–34–5062, Revision 02, dated July 24, 2015.
- Service Bulletin A340–34–5070, dated October 9, 2009.
- Service Bulletin A340–34–5105, dated March 26, 2015.

The service information describes procedures for replacing certain pitot probes with certain new pitot probes. The service information also describes procedures for inspections and functional heat testing of certain pitot probes, and replacement if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 55 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	5 work-hours × $85 per hour = $425.	$0	$425	$23,375
Inspection/test	3 work-hours × $85 per hour = $255.	0	255 per inspection/test cycle	14,025

We have received no definitive data that will enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–07–30 Airbus: Amendment 39–18475. Docket No. FAA–2015–4810; Directorate Identifier 2015–NM–090–AD.

(a) Effective Date

This AD becomes effective May 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD, all manufacturer serial numbers.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a report of blockage of two Angle of Attack (AOA) probes during climb, leading to activation of the Alpha Protection (Alpha Prot) while the Mach number increased. This activation could cause a continuous nose-down pitch rate that cannot be stopped with backward sidestick input, even in the full backward position. We are issuing this AD to prevent erroneous AOA information and Alpha Prot activation due to blocked AOA probes, which could result in a continuous nose-down command and consequent loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement of Certain UTC Aerospace (UTAS) AOA Sensors

For airplanes on which any UTAS AOA sensor having part number (P/N) 0861ED or P/N 0861ED2 is installed: At the applicable time specified in paragraph (h) of this AD, replace all Captain and First Officer AOA sensors (probes) having P/N 0861ED or 0861ED2 with AOA sensors having Thales P/N C16291AB, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Airbus Service Bulletin A330–34–3315, dated March 26, 2015 (for Model A330 airplanes).

(2) Airbus Service Bulletin A340–34–4294, dated March 26, 2015 (for Model A340–200 and –300 airplanes).

(3) Airbus Service Bulletin A340–34–5105, dated March 26, 2015 (for Model A340–500 and –600 airplanes).

(h) Compliance Times for the Requirements of Paragraph (g) of This AD

Do the actions required by paragraph (g) of this AD at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) For airplanes with AOA sensors having P/N 0861ED: Within 22 months after the effective date of this AD.

(2) For airplanes with AOA sensors having P/N 0861ED2: Within 7 months after the effective date of this AD.

(i) Replacement of Certain SEXTANT/THOMSON AOA Sensors

For airplanes on which any SEXTANT/THOMSON AOA sensor having P/N 45150320 is installed: Within 22 months after the effective date of this AD, replace all SEXTANT/THOMSON AOA sensors (probes) having P/N 45150320 with AOA sensors having Thales P/N C16291AB, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (i)(1) or (i)(2) of this AD.

(1) Airbus Service Bulletin A330–34–3228, dated October 7, 2009 (for Model A330 airplanes).

(2) Airbus Service Bulletin A340–34–4234, dated October 7, 2009 (for Model A340–200 and –300 airplanes).

(j) Repetitive Inspections/Tests of Certain Thales AOA Sensors

For airplanes on which one or more Thales AOA sensor having P/N C16291AA is installed: Before the accumulation of 17,000 total flight hours on the AOA sensor since first installation on an airplane, or within 6 months after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 3,800 flight hours; do a detailed inspection of the three AOA sensors at FINs 3FP1, 3FP2, and 3FP3 for discrepancies (*e.g.,* the vane of the sensor does not deice properly), and a functional heating test of each AOA sensor having P/N C16291AA, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Airbus Service Bulletin A330–34–3215, Revision 03, dated July 23, 2015 (for Model A330 airplanes).

(2) Airbus Service Bulletin A340–34–4215, Revision 03, dated July 27, 2015 (for Model A340–200 and –300 airplanes).

(3) Airbus Service Bulletin A340–34–5062, Revision 02, dated July 24, 2015 (for Model A340–500 and –600 airplanes).

(k) Corrective Actions

If any discrepancy is found during any inspection required by paragraph (j) of this AD, or if any test is failed during the heating test required by paragraph (j) of this AD: Before further flight, replace all affected AOA sensors with sensors identified in paragraph (k)(1) or (k)(2) of this AD, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Replace with AOA sensors having Thales P/N C16291AA, on which the inspection and test required by paragraph (j) of this AD were passed.

(2) Replace with AOA sensors having Thales P/N C16291AB.

(l) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, which are not incorporated by reference in this AD.

(1) Airbus Service Bulletin A330–34–3215, Revision 02, dated March 29, 2010.

(2) Airbus Service Bulletin A340–34–4215, Revision 02, dated March 29, 2010.

(3) Airbus Service Bulletin A340–34–5062, Revision 01, dated March 29, 2010.

(m) Airplanes Excluded From Certain Requirements

(1) The actions specified in paragraphs (g), (i), (j), and (k) of this AD are not required, provided that the conditions specified in paragraphs (m)(1)(i), (m)(1)(ii), and (m)(1)(iii) of this AD are met.

(i) Airbus Modification 58555 (installation of Thales P/N C16291AB AOA sensors) has been embodied in production.

(ii) Airbus Modification 46921 (installation of UTAS AOA sensors) has not been embodied in production.

(iii) No AOA sensor having SEXTANT/THOMSON P/N 45150320 or UTAS P/N 0861ED or P/N 0861ED2 has been installed on the airplane since date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness.

(2) The actions specified in paragraphs (g) and (i) of this AD are not required, provided that all conditions specified in paragraphs (m)(2)(i), (m)(2)(ii), and (m)(2)(iii) of this AD are met.

(i) Only AOA sensors with part numbers approved after the effective date of this AD have been installed.

(ii) The AOA sensor part number is approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(iii) The installation is accomplished in accordance with airplane modification instructions approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the EASA; or Airbus's EASA DOA.

(n) Optional Terminating Modification

Replacement of all Thales AOA sensors having P/N C16291AA with Thales AOA sensors having P/N C16291AB, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (n)(1), (n)(2), or (n)(3) of this AD, terminates the repetitive inspections and functional heating tests required by paragraph (j) of this AD.

(1) Airbus Service Bulletin A330–34–3228, dated October 7, 2009 (for Model A330 airplanes).

(2) Airbus Service Bulletin A340–34–4234, dated October 7, 2009 (for Model A340–200 and –300 airplanes).

(3) Airbus Service Bulletin A340–34–5070, dated October 9, 2009 (for Model A340–500 and –600 airplanes).

(o) Parts Installation Prohibitions

(1) For airplanes on which only Thales P/N C16291AB AOA sensors are installed as of the effective date of this AD: No person may install, on any airplane, a Thales AOA sensor having P/N C16291AA as of the effective date of this AD.

(2) For airplanes on which the modification specified in paragraph (n) of this AD has been done: No person may install, on any airplane, a Thales AOA sensor

having P/N C16291AA after accomplishing the specified modification.

(3) For airplanes on which Thales P/N C16291AA or P/N C16291AB AOA sensors are installed as of the effective date of this AD: No person may install, on any airplane, a UTAS AOA sensor having P/N 0861ED or P/N 0861ED2, or a SEXTANT/THOMSON AOA sensor having P/N 45150320, as of the effective date of this AD.

(4) For airplanes on which the replacement required by paragraph (i) of this AD has been done: No person may install, on any airplane, a UTAS AOA sensor having P/N 0861ED or P/N 0861ED2, or a SEXTANT/THOMSON AOA sensor having P/N 45150320, after accomplishing the replacement.

(5) For airplanes on which the replacement required by paragraph (g) of this AD has been done: No person may install, on any airplane, a UTAS AOA sensor having P/N 0861ED or P/N 0861ED2, or a SEXTANT/THOMSON AOA sensor having P/N 45150320, after accomplishing the replacement, except that a UTAS AOA sensor having P/N 0861ED may be installed in the standby position of that airplane.

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0134, dated July 8, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4810.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (r)(3) and (r)(4) of this AD.

(r) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A330–34–3215, Revision 03, dated July 23, 2015.

(ii) Airbus Service Bulletin A330–34–3228, dated October 7, 2009.

(iii) Airbus Service Bulletin A330–34–3315, dated March 26, 2015.

(iv) Airbus Service Bulletin A340–34–4215, Revision 03, dated July 27, 2015.

(v) Airbus Service Bulletin A340–34–4234, dated October 7, 2009.

(vi) Airbus Service Bulletin A340–34–4294, dated March 26, 2015.

(vii) Airbus Service Bulletin A340–34–5062, Revision 02, dated July 24, 2015.

(viii) Airbus Service Bulletin A340–34–5070, dated October 9, 2009.

(ix) Airbus Service Bulletin A340–34–5105, dated March 26, 2015.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 26, 2016.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08267 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2464; Directorate Identifier 2014–NM–195–AD; Amendment 39–18476; AD 2016–07–31]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–22–11 for certain The Boeing Company Model 747–400 and –400D series airplanes. AD 2013–22–11 required repetitive inspections to detect cracks in the floor panel attachment fastener holes of certain upper deck floor beam upper chords, repetitive inspections, corrective actions if necessary, and replacement of the upper deck floor beam upper chords. Since we issued AD 2013–22–11, we received a report that certain fastener holes in the upper deck floor beam upper chords may not have been inspected in accordance with AD 2013–22–11. This AD adds additional repetitive inspections for cracks for certain airplanes, and corrective actions if necessary. We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam. Such cracks could become large and cause the floor beams to become severed and result in rapid decompression or reduced controllability of the airplane.

DATES: This AD is effective May 18, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2464.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2464; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–22–11, Amendment 39–17643 (78 FR 66254, November 5, 2013), ("AD 2013–22–11"). AD 2013–22–11 applied to certain The Boeing Company Model 747–400 and –400D series airplanes. The NPRM published in the **Federal Register** on July 23, 2015 (80 FR 43648) ("the NPRM"). The NPRM was prompted by a report that certain fastener holes in the upper deck floor beam upper chords may not have been inspected in accordance with AD 2013–22–11. The NPRM proposed to continue to require repetitive inspections to detect cracks in the floor panel attachment fastener holes of certain upper deck floor beam upper chords, repetitive inspections, corrective actions if necessary, and replacement of the upper deck floor beam upper chords. The NPRM also proposed to require additional repetitive inspections for cracks for certain airplanes, and corrective actions if necessary. We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam. Such cracking could become large and cause the floor beams to become severed and result in rapid decompression or reduced controllability of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment. United Airlines supported the NPRM.

Request To Revise "Exceptions to Service Information Specifications"

Boeing requested that paragraph (m)(4), "Exceptions to Service Information Specifications," of the proposed AD be revised. Boeing stated that Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, which is included in paragraph (m)(4), has the same compliance time as table 3 in Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014; therefore, Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, should also be included in paragraph (m)(4) of the proposed AD.

For the reason provided by the commenter we agree to include Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, in paragraph (m)(4) of this AD. We have also revised paragraph (m)(4) of this AD by removing the reference to Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, because this AD only refers to Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, for compliance times.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the change described and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014. The service information describes procedures for upper deck floor beam upper chord inspection and repair at floor panel attachment fastener holes in section 41 and section 42. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 84 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (retained actions from AD 2013–22–11).	Up to 309 work-hours × $85 per hour = $26,265 per inspection cycle.	$0	Up to $26,265 per inspection cycle.	Up to $2,206,260 per inspection cycle.
New inspections	Up to 241 work-hours × $85 per hour = $20,485.	0	Up to $20,485 per inspection cycle.	Up to $1,720,740 per inspection cycle.

We have received no definitive data that will enable us to provide a cost estimate for the repair or modification specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–22–11, Amendment 39–17643 (78 FR 66254, November 5, 2013), and adding the following new AD:

2016–07–31 The Boeing Company: Amendment 39–18476; Docket No. FAA–2015–2464; Directorate Identifier 2014–NM–195–AD.

(a) Effective Date

This AD is effective May 18, 2016.

(b) Affected ADs

This AD replaces AD 2013–22–11, Amendment 39–17643 (78 FR 66254, November 5, 2013) ("AD 2013–22–11").

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and –400D series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder indicating that certain upper chords of the upper deck floor beam are subject to widespread fatigue damage. This AD was also prompted by reports that certain fastener holes in the upper deck floor beam upper chords in Section 41, may not have been inspected in accordance with AD 2013–22–11. We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could become large and cause the floor beams to become severed and result in rapid decompression or reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Section 41—Repetitive Inspections, and Corrective Actions

At the applicable time specified in table 1 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, do open hole or surface high frequency eddy current inspections (HFEC) for cracking of the floor panel attachment holes in the upper deck floor beam upper chords, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014. If any crack is found during any inspection, before further flight, repair in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, or repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD. Repeat the inspections thereafter at the applicable time specified in table 1 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, until an action specified in paragraph (g)(1) or (g)(2) of this AD is done.

(1) Doing a repair as a hole modification in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, except as required by paragraph (m)(2) of this AD, terminates the inspections required by paragraph (g) of this AD for the modified hole only.

(2) Doing a modification in accordance with Figure 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, except as required by paragraph (m)(2) of this AD, terminates the inspections required by paragraph (g) of this AD for the modification only.

(h) Section 41—Repetitive Inspection of Repaired or Modified Holes, and Corrective Actions

For airplanes on which a repair specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, is done, or a modification specified in Figure 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, is done: At the applicable time specified in table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, except as required by paragraph (m)(3) of this AD, do open hole or surface HFEC for cracking of repaired or modified floor panel attachment holes in the upper deck floor beam upper chords, in accordance with Part 1 or Part 3, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014. If any crack is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD. Repeat the inspections thereafter at the applicable time specified in table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014.

(i) Section 44—Repetitive Inspection, and Corrective Actions

For airplanes identified in Group 1 in Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014: At the applicable time specified in table 3 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, except as required by paragraph (m)(4) of this AD, do open hole or surface HFEC inspections of the floor panel attachment holes in the upper deck floor beam upper chords, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014. If any crack is found during any inspection required by this paragraph, before further flight, repair in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, except as required by paragraph (m)(2) of this AD. Repeat the inspections thereafter at the applicable time specified in table 3 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, until an action specified in paragraph (i)(1) or (i)(2) of this AD is done.

(1) Doing a repair as a hole modification in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, except as required by paragraph (m)(2) of this AD, terminates the inspections required by paragraph (i) of this AD for that modified hole only.

(2) Doing a modification in accordance with Figure 21 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21,

2014, except as required by paragraph (m)(2) of this AD, terminates the inspections required by paragraph (i) of this AD for that modified hole only.

(j) Section 44—Repetitive Inspection of Repaired or Modified Holes, and Corrective Actions

For airplanes identified in Group 1 in Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, on which a repair specified in Part 5 of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, is done or the modification specified in Figure 21 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, is done: At the applicable time specified in table 4 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, except as required by paragraph (m)(3) of this AD, do open hole or surface HFEC inspections of repaired or modified floor panel attachment holes in the upper deck floor beam upper chords, in accordance with Part 4 or Part 6, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014. If any crack is found during any inspection by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD. Repeat the inspections thereafter at the applicable time specified in table 4 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014.

(k) Sections 41 and 44—Replacement and Post-Replacement Repetitive Inspections

At the applicable time specified in table 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014: Replace all upper deck floor beam upper chords, in accordance with Part 7 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014. Within 20,000 flight cycles after doing the replacement, do the inspections specified in paragraphs (g) and (i) of this AD, as applicable. Thereafter, repeat the inspections required by paragraphs (g) and (i) of this AD, as applicable, at the times specified in paragraphs (g) and (i) of this AD.

(l) Section 41—Repetitive Inspection of Plugged or Re-Used Holes, and Corrective Actions

For airplanes identified in Group 2 in Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014: At the applicable time specified in table 6 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, except as required by paragraph (m)(1) of this AD, at all plugged or reused floor panel attachment holes in the affected floor beam upper chords, do a surface HFEC inspection of the upper deck floor beam upper chords and detailed inspection for cracks on the vertical flange, in accordance with Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014. If any crack is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD. Repeat the inspections thereafter at the applicable time specified in table 6 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014.

(m) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, specifies a compliance time "after the Revision 2 date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014; specifies to contact Boeing for certain procedures: Do the specified actions before further flight using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(3) Where table 2 or table 4 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, specifies to contact Boeing for inspections and compliance times: Before further flight, contact the Manager, Seattle Aircraft Certification Office (ACO), FAA, for inspections and compliance times and accomplish the inspections at the given times.

(4) Where Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014, specifies a compliance time "after the Revision 1 date of this service bulletin," this AD requires compliance within the specified compliance time after December 10, 2013 (the effective date of AD 2013–22–11).

(n) Credit for Previous Actions

(1) This paragraph restates the requirements of paragraph (o) of AD 2013–22–11, with new reference to paragraph (h) of this AD. This paragraph provides credit for the actions required by paragraphs (g) and (h) of this AD, if those actions were performed before December 10, 2013 (the effective date of AD 2013–22–11), using Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008, which was incorporated by reference in AD 2009–10–16, Amendment 39–15901 (74 FR 22424, May 13, 2009).

(2) This paragraph provides credit for the actions required by paragraphs (g) through (k) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, which was incorporated by reference in AD 2013–22–11.

(o) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (p) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2013–22–11 are approved as AMOCs for the corresponding provisions of paragraphs (g) through (k) of this AD.

(p) Related Information

For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov*.

(q) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 747–53A2688, Revision 2, dated August 21, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on March 30, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08271 Filed 4–12–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8136; Directorate Identifier 2014–NM–189–AD; Amendment 39–18480; AD 2016–08–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–223F and –243F airplanes. This AD was prompted by a report of missing fasteners in certain locations of the fuselage during production. This AD would require inspecting for missing, damaged, or incorrectly installed fasteners; and corrective actions if necessary. We are issuing this AD to detect and correct cracking of the fuselage due to missing, damaged, or incorrectly installed fasteners, which could result in reduced structural integrity of the fuselage.

DATES: This AD is effective May 18, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8136.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8136; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A330–223F and –243F airplanes. The NPRM published in the **Federal Register** on January 4, 2016 (81 FR 22) ("the NPRM"). The NPRM was prompted by a report of missing fasteners in certain locations of the fuselage during production. The NPRM proposed to require inspecting for missing, damaged, or incorrectly installed fasteners; and corrective actions if necessary. We are issuing this AD to detect and correct cracking of the fuselage due to missing, damaged, or incorrectly installed fasteners, which could result in reduced structural integrity of the fuselage.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0197, dated September 4, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A330–223F and –243F airplanes. The MCAI states:

> During inspection of various fuselage areas on some A330–200F aeroplanes on the production line, prior to delivery, some fasteners were found missing.
>
> This condition, if not detected and corrected, could lead to crack initiation and propagation, possibly resulting in reduced structural integrity of the fuselage.
>
> To address this condition, Airbus issued several Service Bulletins (SB), providing inspection and modification instructions, as applicable.
>
> For the reasons described above, this [EASA] AD requires detailed inspections of the affected areas and, depending on findings, accomplishment of the applicable corrective actions.

Corrective actions include replacing any missing, damaged, or incorrectly installed fasteners, and repair of any discrepancy (deformation or cracking of the fastener rows) of the affected fuselage frame areas. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8136.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed the following Airbus service information, which describes procedures for inspecting for missing, damaged, or incorrectly installed fasteners; and corrective actions.

- Airbus Service Bulletin A330–53–3202, dated May 6, 2014.
- Airbus Service Bulletin A330–53–3212, dated May 6, 2014.
- Airbus Service Bulletin A330–53–3213, dated May 6, 2014.
- Airbus Service Bulletin A330–53–3214, dated May 6, 2014.

We also reviewed the following Airbus service information, which describes procedures for modification of certain sections of the fuselage.

- Airbus Service Bulletin A330–53–3216, dated May 6, 2014.
- Airbus Service Bulletin A330–53–3217, dated May 6, 2014.
- Airbus Service Bulletin A330–53–3218, dated May 6, 2014.
- Airbus Service Bulletin A330–53–3219, dated May 6, 2014.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 3 airplanes of U.S. registry.

We also estimate that it will take about 10 work-hours per product to comply with the basic inspection requirements of this AD, and 1 work-hour per product to report inspection findings. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,805, or $935 per product.

In addition, we estimate that any necessary modification will take about 40 work-hours and require parts costing $210, for a cost of $3,610 per product. We have no way of determining the number of aircraft that might need this action.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition repairs specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–08–04 Airbus: Amendment 39–18480; Docket No. FAA–2015–8136; Directorate Identifier 2014–NM–189–AD.

(a) Effective Date

This AD is effective May 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–223F and –243F airplanes, certificated in any category; manufacturer serial numbers 1004, 1032, 1051, 1062, 1070, 1092, 1115, 1136, 1148, 1164, 1175, 1180, 1320, 1332, 1344, 1350, 1368, 1380, 1386, 1406, 1414, 1418, and 1428.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report of missing fasteners in certain locations of the fuselage during production. We are issuing this AD to prevent cracking of the fuselage due to missing, damaged, or incorrectly installed fasteners, which could result in reduced structural integrity of the fuselage.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Detailed Inspection

Within 72 months since first flight of the airplane: Do a detailed inspection of all applicable fuselage zones for missing, damaged, or incorrectly installed fasteners, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) through (g)(4) of this AD.

(1) Airbus Service Bulletin A330–53–3202, dated May 6, 2014.

(2) Airbus Service Bulletin A330–53–3212, dated May 6, 2014.

(3) Airbus Service Bulletin A330–53–3213, dated May 6, 2014.

(4) Airbus Service Bulletin A330–53–3214, dated May 6, 2014.

(h) Corrective Actions

If any missing, damaged, or incorrectly installed fastener is found during the detailed inspection required by paragraph (g) of this AD, before further flight, do a detailed inspection for discrepancies (deformation or cracking) of the adjacent fastener rows of the applicable fuselage zones, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) through (g)(4) of this AD.

(1) If no discrepancy is found, before further flight, modify the affected fuselage zone, in accordance with the applicable service information specified in paragraphs (h)(1)(i) through (h)(1)(iv) of this AD.

(i) Airbus Service Bulletin A330–53–3216, dated May 6, 2014.

(ii) Airbus Service Bulletin A330–53–3217, dated May 6, 2014.

(iii) Airbus Service Bulletin A330–53–3218, dated May 6, 2014.

(iv) Airbus Service Bulletin A330–53–3219, dated May 6, 2014.

(2) If any discrepancy is found, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(i) Reporting Requirement

Submit a report (including both positive and negative findings) to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, Attn: SDC32 Technical Data and Documentation Services; fax: (+33) 5 61 93 28 06; email: *sb.reporting@airbus.com;* at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the information specified in the inspection report of the applicable service information specified in paragraphs (g)(1) through (g)(4) of this AD.

(1) For airplanes on which the inspection specified in paragraph (g) of this AD is accomplished on or after the effective date of this AD: Submit the report within 30 days after performing the inspection.

(2) For airplanes on which the inspection specified in paragraph (g) of this AD is accomplished before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(4) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0197, dated September 4, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8136.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A330–53–3202, dated May 6, 2014.

(ii) Airbus Service Bulletin A330–53–3212, dated May 6, 2014.

(iii) Airbus Service Bulletin A330–53–3213, dated May 6, 2014.

(iv) Airbus Service Bulletin A330–53–3214, dated May 6, 2014.

(v) Airbus Service Bulletin A330–53–3216, dated May 6, 2014.

(vi) Airbus Service Bulletin A330–53–3217, dated May 6, 2014.

(vii) Airbus Service Bulletin A330–53–3218, dated May 6, 2014.

(viii) Airbus Service Bulletin A330–53–3219, dated May 6, 2014.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 31, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08366 Filed 4–12–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4204; Directorate Identifier 2015–NM–001–AD; Amendment 39–18482; AD 2016–08–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), modified by a particular supplemental type certificate (STC). This AD was prompted by a report of chafing found on the overflow sensor harness of the surge tank, and subsequent contact between the electrical wiring and fuel tank structure. This AD requires a one-time inspection for damage of the outer tank overflow sensor harness, and repair if necessary. This AD also requires modification of the sensor harness. We are issuing this AD to prevent chafing of the harness and subsequent contact between the electrical wiring and fuel tank structure, which could result in electrical arcing and a fuel tank explosion.

DATES: This AD becomes effective May 18, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Simmonds Precision Products, Inc., A UTC Aerospace Company, 100 Panton Road, Vergennes, VT 05491; phone 802–877–2911; fax 802–877–4444; Internet *http://www.utcaerospacesystems.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4204.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4204; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marc Ronell, Aerospace Engineer, Boston Aircraft Certification Office, ANE–150, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7776; fax: 781–238–7170; email: *marc.ronell@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), modified by a particular STC. The NPRM published in the **Federal Register** on October 23, 2015 (80 FR 64371) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0193, dated August 23, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300 series airplanes and all Model A300–600 series airplanes.

The MCAI corresponds to FAA AD 2015–03–03, Amendment 39–18099 (80 FR 11101, March 2, 2015) (''AD 2015–03–03''), which applies to Airbus Model A300 series airplanes and Model A300–600 series airplanes, all serial numbers, except for airplanes modified by STC ST00092BO (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/D41C5AE8E46B4901862574900069E004?OpenDocument&Highlight=st00092bo*).

In AD 2015–03–03, we explained that airplanes that have had the in-tank fuel quantity system modified by STC ST00092BO cannot accomplish the actions required by AD 2015–03–03 by using Airbus Service Bulletin A300–28–6109, Revision 01, dated December 20, 2013.

We also stated that we were considering separate rulemaking to require the procedures and compliance time specified in UTC Aerospace Systems Service Bulletin 300723–28–03 (V–1577), dated October 10, 2014, for airplanes modified by STC ST00092BO. We have determined that further rulemaking is indeed necessary, and this AD follows from that determination.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4204.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Extend Proposed Compliance Time

FedEx asked that we extend the compliance time required by paragraph (g) of the proposed AD from 12 to 30 months. FedEx stated that AD 2015–03–03 required accomplishing the inspection and rerouting within 30 months. FedEx added that, in both AD 2015–03–03 and the NPRM, improper harness routing is the root cause of the issue, and stated that airplanes having STC ST00092BO have equal susceptibility to harness chafing damage as those identified in AD 2015–03–03. FedEx suggested that a 30-month compliance time would still provide an acceptable level of safety. FedEx added that it is expecting to wait four to six months for one of the required materials, and the availability of its installation tool has not been confirmed. FedEx also stated that a longer compliance time would allow it to minimize the operational impact and accomplish the potentially lengthy service information at C-checks.

We do not agree with the commenter's request to extend the compliance time, because the request is not supported by any analysis or supporting data. This compliance time is shorter to account for the time already elapsed for airplanes having STC ST00092BO. In developing an appropriate compliance time for the actions specified in this AD, we considered the safety implications and normal maintenance schedules for the timely accomplishment of the specified actions. We have determined that the proposed 12-month compliance time will ensure an acceptable level of safety and allow the actions to be done during scheduled maintenance intervals for most affected operators. However, affected operators may request an alternative method of compliance (AMOC) to request an extension of the compliance time under the provisions of paragraph (i) of this AD by submitting data and analysis substantiating that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Increase Work Hour Estimate

FedEx stated that, although the referenced service information specifies 14 work-hours per airplane for accomplishing both actions, the number of work-hours could be closer to 24, especially if a harness is replaced.

We infer that the commenter is requesting that the work–hour estimate specified in the ''Costs of Compliance'' section be increased. We partially agree with the request. We provided our best estimate for the work hours based on the information received from the airplane manufacturer and specified in the referenced service information. However, we do not know the number of work-hours it would take to replace a harness, and as stated in the ''Costs of Compliance'' section, we have received no definitive data that would enable us to provide cost estimates for the on-condition actions. We have not changed this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

UTC Aerospace Systems has issued Service Bulletin 300723–28–03 (V–1577), Revision 01, dated July 20, 2015. The service information describes procedures for an inspection for damage of the outer tank of the overflow sensor harness, repair, and modification of the sensor harness. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 65 airplanes of U.S. registry.

We also estimate that it takes about 3 work-hours per product to comply with the inspection required by this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this inspection required by this AD on U.S. operators to be $16,575, or $255 per product.

We estimate that it takes about 11 work-hours per product to comply with the modification requirements of this AD. The average labor rate is $85 per work-hour. Required parts cost about $100 per product. Based on these figures, we estimate the cost of this modification on U.S. operators to be $67,275, or $1,035 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–08–06 Airbus: Amendment 39–18482; Docket No. FAA–2015–4204; Directorate Identifier 2015–NM–001–AD.

(a) Effective Date

This AD becomes effective May 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD; certificated in any category; modified by Simmonds Precision Products, Inc., Supplemental Type Certificate (STC) ST00092BO (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/D41C5AE8E46B4901862574900069E004?OpenDocument&Highlight=st00092bo*).

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Model A300 B4–605R and B4–622R airplanes.

(3) Model A300 F4–605R and F4–622R airplanes.

(4) Model A300 C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report of chafing found on the overflow sensor harness of the surge tank, and subsequent contact between the electrical wiring and fuel tank structure. We are issuing this AD to prevent chafing of the harness and subsequent contact between the electrical wiring and fuel tank structure, which could result in electrical arcing and a fuel tank explosion.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) One-Time Inspection and Repair

Within 12 months after the effective date of this AD: Do the actions required by paragraphs (g)(1), (g)(2), and (g)(3) of this AD, in accordance with the Accomplishment Instructions of UTC Aerospace Systems Service Bulletin 300723–28–03 (V–1577), Revision 01, dated July 20, 2015.

(1) Perform a one-time general visual inspection for damage of the outer tank sensor harness, and if any damage is found on the expando sleeving, before further flight, do a detailed inspection of the underlying wires for exposed conductor wires. If any exposed conductor wire is found, before further flight, replace the outer wing harness assembly.

(2) Install new brackets and re-route the surge tank overflow sensor harness.

(3) Modify the harness protection.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using UTC Aerospace Systems Service Bulletin 300723–28–03 (V–1577), dated October 10, 2014. This service information is not incorporated by reference in this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office (ACO), ANE–150, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Marc Ronell, Aerospace Engineer, Boston Aircraft Certification Office, ANE–150, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7776; fax: 781–238–7170; email: *marc.ronell@faa.gov*.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) UTC Aerospace Systems Service Bulletin 300723–28–03 (V–1577), Revision 01, dated July 20, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Simmonds Precision Products, Inc., A UTC Aerospace Company, 100 Panton Road, Vergennes, VT 05491; phone 802–877–2911; fax 802–877–4444; Internet *http://www.utcaerospacesystems.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 30, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08352 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3771; Airspace Docket No. 15–ANM–28]

Establishment of Class E Airspace, South Bend, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects administrative errors in a final rule published in the **Federal Register** of March 8, 2016, that establishes Class E airspace at Willapa Harbor Heliport, South Bend, WA, by amending the assigned paragraph for rule incorporation within FAA Order 7400.9Z, by correcting format errors in the text header of the airspace legal description, and by correcting inconsistent airport name information in the airspace legal description. These changes do not affect the boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, May 26, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; Telephone: (425) 203–4511.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** establishing Class E airspace extending upward from 700 feet above the surface at Willapa Harbor Heliport, South Bend, WA (81 FR 12001 March 8, 2016) Docket No. FAA–2015–3771. Subsequent to publication the FAA identified errors in the assigned paragraph for incorporation, text header format, and airport name information. This action corrects the errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of March 8, 2016 (81 FR 12001) FR Doc. 2016–05059, Establishment of Class E airspace, South Bend, WA, is corrected as follows:

§ 71.1 [Amended]

On page 12002, column 1, line 17, remove "Paragraph 5000 Class D Airspace", and add in its place "Paragraph 6005. Class E airspace Areas Extending Upward from 700 feet or more Above the Surface of the Earth."

On page 12002, column 1, line 19 and 20, remove "ANM WA E5 Willapa Harbor Heliport, South Bend, WA [New]" and add in its place "ANM WA E5 South Bend, WA [New]."

On page 12002, column 1, lines 27, 28, 34 and 35, after the word 'Harbor' add the word 'Heliport'.

Issued in Seattle, Washington, on April 5, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–08395 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0165; FRL–9944–68–Region 9]

Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze Federal Implementation Plan; Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising portions of the Arizona Regional Haze Federal Implementation Plan (FIP) applicable to the Coronado Generating Station (Coronado) and the Cholla Power Plant (Cholla). In response to a petition for reconsideration from the Salt River Project Agricultural Improvement and Power District (SRP), the owner and operator of Coronado, we are replacing a plant-wide compliance method with a unit-specific compliance method for determining compliance with the best available retrofit technology (BART) emission limits for nitrogen oxides (NO_X) from Units 1 and 2 at Coronado. While the plant-wide limit for NO_X emissions from Units 1 and 2 was established as 0.065 lb/MMBtu, we are now setting a unit-specific limit of 0.065 lb/MMBtu for Unit 1 and 0.080 lb/MMBtu for Unit 2. In addition, we are revising the work practice standard in the FIP for Coronado. Finally, we are removing the affirmative defense for malfunctions, which applied to both Coronado and Cholla.

DATES: *Effective date:* This rule will be effective May 13, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2015–0165. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Vijay Limaye, U.S. EPA, Region 9, Planning Office, Air Division, Air–2, 75 Hawthorne Street, San Francisco, CA 94105; telephone number: (415) 972–3086; email address: *limaye.vijay@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

Table of Contents

I. Definitions
II. Background
III. Proposed Action
IV. Public Comments and EPA Responses
V. Final Action
VI. Environmental Justice Considerations
VII. Statutory and Executive Order Reviews

I. Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- The initials *AAC* mean or refer to the Arizona Administrative Code.
- The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.
- The initials *AMPD* mean or refer to Air Markets Program Data.
- The words *Arizona* and *State* mean the State of Arizona.
- The initials *CAM* mean or refer to Compliance Assurance Monitoring.
- The word *Cholla* refers to the Cholla Power Plant.
- The word *Coronado* refers to the Coronado Generating Station.
- The initials *BART* mean or refer to Best Available Retrofit Technology.
- The initials *BOD* mean or refer to boiler operating day.
- The initials *CAA* mean or refer to the Clean Air Act.
- The initials *CBI* mean or refer to Confidential Business Information.
- The initials *EGU* mean or refer to Electric Generating Unit.
- The words *EPA, we, us,* or *our* mean or refer to the United States Environmental Protection Agency.
- The initials *FIP* mean or refer to Federal Implementation Plan.
- The initials *LNB* mean or refer to low-NO_X burners.
- The initials *MMBtu* mean or refer to million British thermal units.
- The initials *MOT* mean or refer to minimum operating temperature.
- The initials *MW* mean or refer to megawatts.
- The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.
- The initials *NESHAP* mean or refer to National Emission Standards for Hazardous Air Pollutants.
- The initials *NSPS* mean or refer to Standards of Performance for New Stationary Sources.
- The initials *NO_X* mean or refer to nitrogen oxides.
- The initials *OFA* mean or refer to over fire air.
- The initials *RHR* mean or refer to the EPA's Regional Haze Rule.
- The initials *RMB* mean or refer to RMB Consulting and Research.
- The initials *S&L* mean or refer to Sargent & Lundy.
- The initials *SCR* mean or refer to Selective Catalytic Reduction.
- The initials *SIP* mean or refer to State Implementation Plan.
- The initials *SRP* mean or refer to the Salt River Project Agricultural Improvement and Power District.
- The initials *SSM* mean or refer to startup, shutdown, and malfunction.
- The initials *UPL* mean or refer to Upper Prediction Limit.

II. Background

A. Summary of Statutory and Regulatory Requirements

Congress created a program for protecting visibility in the nation's national parks and wilderness areas in 1977 by adding section 169A to the Clean Air Act (CAA). This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution."[1] It also directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their State Implementation Plans (SIPs) to contain such measures as may be necessary to make reasonable progress towards the national visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate best available retrofit technology (BART) controls. These sources are referred to as "BART-eligible" sources.[2] In the 1990 CAA Amendments, Congress amended the visibility provisions in the CAA to focus attention on the problem of regional haze, which is visibility impairment produced by a multitude of sources and activities located across a broad geographic area.[3] We promulgated the Regional Haze Rule (RHR) in 1999, which requires states to develop and implement SIPs to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas[4] by reducing emissions that cause or contribute to regional haze.[5] Under the RHR, states are directed to conduct BART determinations for BART-eligible sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area.[6]

B. History of BART Determination for Coronado Generating Station

The Arizona Department of Environmental Quality (ADEQ) submitted a Regional Haze SIP ("Arizona Regional Haze SIP") under Section 308 of the RHR to EPA Region 9 on February 28, 2011. The Arizona Regional Haze SIP included BART determinations for NO_X, particulate matter (PM), and sulfur dioxide (SO_2) for Units 1 and 2 at Coronado. We proposed on July 20, 2012, to approve ADEQ's BART determinations for PM and SO_2, but to disapprove its determination for NO_X at Coronado.[7] In the same notice, we also proposed a FIP that included a NO_X BART emission limit of 0.050 lb/MMBtu for Unit 1 and 0.080 lb/MMBtu for Unit 2 based on a 30-boiler-operating-day (BOD) rolling average.[8] These limits correspond to the use of Selective Catalytic Reduction (SCR) and low-NO_X burners (LNB) with over fire air (OFA) to reduce NO_X emissions. We noted that a consent decree between SRP and the EPA required the installation of SCR and compliance with a NO_X emission limit of 0.080 lb/MMBtu (30–BOD rolling average) at Coronado Unit 2 by June 1, 2014. In its comments on our proposal, SRP asserted that a NO_X emission rate of 0.050 lb/MMBtu was not achievable at either of the Coronado units, due to their startup/shutdown operating profile. In support of this assertion, SRP submitted reports by two consultants, Sargent & Lundy (S&L) and RMB Consulting and Research (RMB), which indicated that the Coronado units could achieve a 30–BOD rolling average emission rate in the range of 0.053 to 0.072 lb/MMBtu per unit.[9] The S&L report also examined potential measures to improve the performance of the current SCR design for Unit 2, including installation of a "low load temperature control system," (*i.e.*, steam reheat) which would allow the SCR system to operate during periods of low load.

In the final Arizona Regional Haze FIP, we set a plant-wide NO_X emission limit for Coronado of 0.065 lb/MMBtu on a 30–BOD rolling average, which SRP could meet by installing a low-load temperature control system on Unit 2 and an SCR system including a low-load temperature control system on Unit 1.[10] We structured the compliance determination method for this limit such that, when one of the two units was not operating, its emissions from the preceding 30 boiler operating days would continue to be included in the two-unit average. Please refer to our final rule published on December 5, 2012, for further information on the BART determinations and compliance methodology.

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[1] 42 U.S.C. 7491(a)(1).

[2] 40 CFR 51.301.

[3] See CAA section 169B, 42 U.S.C. 7492.

[4] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas, and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

[5] See generally 40 CFR 51.308.

[6] 40 CFR 51.308(e).

[7] 77 FR 42834.

[8] Boiler-operating day is defined as "a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the unit." 40 CFR 52.145(f)(2).

[9] 77 FR 72555.

[10] *Id.*

In addition, we included in the FIP two additional requirements that apply to all affected sources, including Coronado. First, we promulgated a work practice standard that requires that pollution control equipment be designed and capable of operating properly to minimize emissions during all expected operating conditions.[11] Second, we incorporated by reference into the FIP certain provisions of the Arizona Administrative Code (AAC) that establish an affirmative defense for excess emissions due to malfunctions.

C. Petition for Reconsideration and Stay

We received a petition from SRP on February 4, 2013, requesting partial reconsideration and administrative stay of our final rule under section 307(d)(7)(B) of the CAA and section 705 of the Administrative Procedure Act.[12] EPA Region 9 sent a letter on April 9, 2013, to representatives of SRP informing the company that we were granting partial reconsideration of the final rule for the Arizona Regional Haze FIP.[13] In particular, we stated that we were granting reconsideration of the compliance method for NO_X emissions from Units 1 and 2 at Coronado and that we would issue a notice of proposed rulemaking seeking comment on an alternative compliance methodology. We also noted that, because we initially proposed different NO_X emission limits for the two units, we would seek comment on the appropriate emission limit for each of the units.

III. Proposed Action

On March 31, 2015, the EPA proposed action on reconsideration of the compliance method and NO_X emissions limits for Coronado in the Arizona Regional Haze FIP.[14] In particular, we proposed a unit-specific compliance method and separate numerical emission limits for NO_X at Coronado Units 1 and 2. We also proposed to revise the work practice requirement that applies to Coronado and to remove the affirmative defense for malfunctions that is currently included in the FIP for Coronado and Cholla.[15] Finally, we proposed to determine that these revisions to the FIP would comply with CAA section 110(l).

A. Proposed Compliance Method for Unit-Specific Emission Limits

We proposed to set a separate rolling 30–BOD lb/MMBtu limit for each of the two Coronado Units, based on the following compliance method:

> The 30-day rolling average NO_X emission rate for each unit shall be calculated in accordance with the following procedure: First, sum the total pounds of NO_X emitted from the unit during the current boiler operating day and the previous twenty-nine (29) boiler-operating days; second, sum the total heat input to the unit in MMBtu during the current boiler operating day and the previous twenty-nine (29) boiler-operating days; and third, divide the total number of pounds of NO_X emitted during the thirty (30) boiler-operating days by the total heat input during the thirty (30) boiler-operating days. A new 30-day rolling average NO_X emission rate shall be calculated for each new boiler operating day. Each 30-day rolling average NO_X emission rate shall include all emissions that occur during all periods within any boiler operating day, including emissions from startup, shutdown, and malfunction.

We proposed that this method would replace the plant-wide method promulgated in the final rule at 40 CFR 52.145(f)(5)(B)(ii), but that all other compliance-related requirements, including the monitoring, recordkeeping, and reporting requirements, would remain as promulgated.

B. Proposed Emission Limits for Coronado Units 1 and 2

1. Proposed Emission Limit for Coronado Unit 1

In developing a proposed emission limit for Unit 1, we considered information and analyses provided by SRP, including two reports prepared by S&L and RMB concerning the achievability of various NO_X emission limits at Coronado Unit 1, as well as emission data for Unit 1 as reported to the Air Markets Program Data (AMPD) system.[16] The 2013 S&L Report presented modeling results intended to predict NO_X emissions from Unit 1 under various operating scenarios.[17] The 2013 RMB Report applied an "upper prediction limit" (UPL) technique to the results of the S&L report in order to account for "the impact of measurement uncertainty and other process variation."[18]

In our evaluation of the 2013 S&L report, we found that the scenarios examined by S&L were realistic depictions of load profile scenarios historically experienced by the Coronado units. In particular, we found that S&L's scenario 5c, which consists of low-load cycling operations (with SCR and steam reheat assumed) and three cold startups within a 30-day period was a reasonable and conservative representation of expected future operations at Coronado Unit 1, in light of the number of startup events that have historically occurred and SRP's expectation that the Coronado units will experience greater periods of operation in load-following service or nonoperation in the future. Accordingly, we proposed to find that an emission rate of 0.065 lb/MMBtu, which corresponds to S&L's scenario 5c, was a reasonable estimate of average SCR performance for Unit 1.

We were unable to evaluate fully the RMB Report because it lacked documentation regarding many of its components. In addition, we found that the data set for NO_X emissions from Coronado Unit 1 "is much more extensive, represents continuous data collected over a long period of time, and covers a wider range of unit operations" relative to the data sets for which the EPA has previously employed a UPL analysis.[19] This better dataset means that use of the UPL analysis method is not necessary and use of the actual data from the unit is more representative. Accordingly, we proposed to find that the use of the UPL method was not appropriate for setting an emission limit for Coronado Unit 1. We also proposed to find that it was not necessary to raise the numerical emission limit in order to provide an additional compliance margin due to the conservative assumptions in the 2013 S&L Report.

Based on these proposed findings, we proposed to set an emission limit for Coronado Unit 1 of 0.065 lb/MMBtu on a rolling 30–BOD basis. Please refer to our proposal for more information concerning the 2013 S&L and RMB Reports, our evaluation of those reports, and the basis for our proposed emission limit for Unit 1.

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[11] *Id.* (codified at 40 CFR 52.145(f)(10)).

[12] Petition of Salt River Project Agricultural Improvement and Power District for Partial Reconsideration and Stay of EPA's Final Rule: "Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans" (February 4, 2013).

[13] Letters from Jared Blumenfeld, EPA, to Norman W. Fichthorn and Aaron Flynn, Hunton and Williams (April 9, 2013).

[14] 80 FR 17010 (March 31, 2015).

[15] The Cholla Power Plant (also known as the Cholla Generating Station) is operated by the by Arizona Public Service Company (APS). APS owns Cholla Units 1–3, while PacifiCorp owns Unit 4.

[16] 80 FR 17013–17016.

[17] Letter from Kelly J. Barr, SRP, to Deborah Jordan, EPA (November 18, 2013), Attachment 1, Sargent and Lundy LLC Report SL–011754, Salt River Project Coronado Generating Station Unit 1 SCR NO_X Emissions Modeling (November 14, 2013) ("2013 S&L Report").

[18] *Id.* Attachment 2, Technical Memorandum from RMB to SRP, NO_X Limits Compliance Monitoring Consideration on Coronado Unit 1 (October 28, 2013) ("2013 RMB Report") at 1.

[19] 80 FR 17016.

2. Proposed Emission Limit for Coronado Unit 2

In proposing an emission limit for Coronado Unit 2, we considered information provided by SRP concerning Unit 2's design parameters and the installation of a low-load temperature control system for Unit 2. We found that this information supported SRP's assertion that the emission limit in the Consent Decree of 0.080 lb/MMBtu represents BART for Unit 2. In particular, we noted that "the fact that SRP has already installed a low-load temperature-control system at this unit in order to meet the 0.080 lb/MMBtu limit suggests that a lower limit would not be achievable on a 30–BOD basis." [20] Therefore, we proposed to set a unit-specific NO_X limit for Unit 2 of 0.080 lb/MMBtu on a rolling 30–BOD basis.

C. Proposed Revision to Work Practice Standard

In addition to the revisions to the continuously applicable numeric emission limits for each unit, we proposed to revise the work practice standard at 40 CFR 52.145(f)(10) to require continuous operation of pollution control equipment at each unit at all times the unit is in service "in a manner consistent with technological limitations, manufacturer's specifications, and good engineering and good air pollution control practices for minimizing emissions." [21]

D. Proposed Removal of Affirmative Defense for Malfunctions

As noted in our proposal, the Arizona Regional Haze FIP incorporates by reference certain provisions of the ACC that establish an affirmative defense that sources may seek to assert in an enforcement action for violations that result from excess emissions due to malfunctions.[22] Subsequent to the EPA's promulgation of the FIP, the United States Court of Appeals for the D.C. Circuit ruled that CAA sections 113 and 304 prohibit the inclusion of affirmative defense provisions in the EPA's regulations imposing emission limits on sources.[23] We explained that the logic of the court's decision applies to the promulgation of a FIP, and precludes the EPA from including an affirmative defense provision in a FIP. In addition, we noted that the EPA had proposed to find AAC R18–2–310(B) and AAC R18–2–310(C) substantially inadequate to meet CAA requirements and to issue a SIP call with respect to these provisions ("SSM SIP Call").[24] Therefore, we proposed to remove the affirmative defense for malfunctions from the Arizona Regional Haze FIP.

E. Non-Interference With Applicable Requirements

The final element of our proposed action on reconsideration was an analysis of whether the proposed revisions to the FIP would interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement of the CAA.[25] We explained that the proposed revision to the FIP would allow for an increase in NO_X emissions of 233 tons per year (tpy) compared to the existing FIP, but that this increase represented less than one percent of the projected total NO_X emission reductions required under the FIP. We also noted that Coronado is located in an area that is designated as Unclassifiable/Attainment for all of the current National Ambient Air Quality Standards (NAAQS). We proposed to find that a revision to the BART emission limits for NO_X would not interfere with attainment or reasonable further progress for any air quality standard. We also proposed to find that the revisions would not interfere with the applicable requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP), Standards of Performance for New Stationary Sources (NSPS), or Compliance Assurance Monitoring (CAM) requirements. Finally, we explained that, while the proposed revisions would alter the specific emission limits that constitute BART for NO_X at Coronado, the effect of the proposed changes on visibility and overall NO_X emissions reductions under the FIP would be very small. Therefore, we proposed to find that the proposed revisions would not interfere with any applicable requirement of the CAA.

IV. Public Comments and EPA Responses

Our proposed action provided a 45-day public comment period. During this period, we received two comment letters: one from Earthjustice on behalf of National Parks Conservation Association and Sierra Club and one from SRP. In addition, after the close of the comment period, we received a comment letter from the Eastern Arizona Counties Organization (ECO).[26] The significant comments and our responses are summarized below.

A. Comments on Proposed Compliance Method for Unit-Specific Emission Limits

Comment: SRP expressed support for the proposed compliance method.

Response: We acknowledge SRP's support for the proposed compliance method. We are finalizing the compliance method as proposed.

B. Comments on Proposed Emission Limits for Coronado Units 1 and 2

1. General Comments on Proposed Emission Limits for Coronado Units 1 and 2

Comment: Earthjustice noted that the proposed emission limits are based on an approach that is "wholly dependent on many assumptions" and expressed concern over several elements of the S&L analysis. First, the commenter objected to breaking up a continuous load profile into ill-defined "modes." Second, the commenter asserted that the EPA should not have accepted S&L's scenarios, as listed in Table 2 of the proposal, specifically citing a lack of support for NO_X rates used by S&L for the various modes of operation. The commenter noted that the EPA indicated only that the emission rates are "reasonable and generally consistent" with data reported to the Air Markets Program Data (AMPD). The commenter indicated that it could not find support for some of the assumed rates in the record. Third, Earthjustice stated that there were insufficient data on how many and what combinations of the operation modes can actually occur in a given future 30-day period. Finally, the commenter argued that the EPA (or the permit-issuing authority) should set separate limits for each scenario and asserted that, in the absence of such limits "this bottom-up approach is clearly open for abuse whereby the limit is set by making up a worst case assumption that may or may not occur—or may occur, but with very low frequency—allowing the operator to have a high NO_X limit at all times.'' Earthjustice further asserted that ''inclusion of startup, shutdown, and malfunctions cannot be an excuse to obtain a high emission limit simply by assuming a 'worst case' future scenario with several of these mode—regardless of the low frequency of such a scenario.''

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[20] *Id.*

[21] Although the preamble referred to this work practice standard specifically in relation to the SCR on Unit 2, the proposed regulatory text applied to all controls devices on both units, which was the intended effect of the proposed revision.

[22] *See* 40 CFR 52.145(f)(11) (incorporating by reference AAC R–18–2–101, paragraph 65; AAC R18–2–310, sections (A), (B), (D) and (E); and AAC R18–2–310.01).

[23] *See NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014).

[24] 79 FR 55920, 55947 (September 17, 2014).

[25] 80 FR 17017–17018.

[26] The ECO letter was dated April 28, 2015, but was not transmitted to the EPA until June 1, 2015.

Response: We partially agree with this comment. With regard to the information supporting the assumptions made in the S&L analysis, we have requested and received additional documentation from SRP. The full details are included as a spreadsheet in the docket of this final rule.[27] To summarize, SRP examined historical operating data from startup and shutdown events over a period extending from 2009 to 2012 and identified multiple cold starts, warm starts, and shutdowns. The listed modes reflect actual events and operating modes from Unit 1 and 2's history and the emission rates associated with these events.

We are cognizant of the commenter's concern that accounting for operating events and conditions that occur relatively infrequently could result in an emission limit that is higher than what would be warranted based solely on normal, steady-state operations. Such a limit provides a larger compliance margin during periods of normal, steady-state operations, when these operating events and conditions are not occurring. However, we disagree with the commenter's argument that separate limits for each mode of operation or load profile are needed. We recognize that the EPA's SSM SIP Policy as of 2015 contemplates the potential use of ''. . . special, alternative emission limitations that apply during startup or shutdown if the source cannot meet the otherwise applicable emission limitation . . .''[28] The EPA's SSM SIP Policy as of 2015 reflects the EPA's interpretation of the CAA to allow continuous emission limitations in SIPs that are composed of, for instance, (i) specific numerical limits that apply during most of the operations at the affected source, and (ii) other specific numerical limits that apply during modes of operation such as startup and shutdown. This policy thus contemplates that the ''otherwise applicable'' numerical limit might be based on steady-state operation, which reflects the best degree of emission control during that mode of operation. The 2015 SSM Policy recommends seven factors that would be relevant to developing an alternative numerical limit for specific modes of operation, if that were appropriate.

The commenter is suggesting that the FIP should take this approach for Coronado. We acknowledge that in general this approach would be consistent with our 2015 SSM SIP Policy, but our SSM Policy also contemplates the use of a single appropriately set numerical limit with a relatively long averaging period that is a weighted average of the levels of emission control during steady-state operation, startup, and shutdown. The EPA notes, however, that the averaging period for an emission limitation must be appropriate for the type of SIP provision at issue, *e.g.*, a 30 day averaging period appropriate for purposes of Regional Haze could be inappropriate in an attainment plan for a 24-hour NAAQS. In this instance, Coronado Unit 1 *can* meet the applicable emission limitation imposed in this FIP, precisely because that limitation accounts for emissions from startup and shutdown. Therefore, an alternative emission limit for startup and shutdown is not necessary or appropriate in this instance.[29] Furthermore, the FIP's approach of setting a single continuously applicable BART emission limit that applies during all modes of operation is consistent with the CAA, the RHR and the BART Guidelines. We are not aware of any instance of BART being implemented through separate emission limits that apply to different modes of operation.

Comment: In addition to the assumptions noted in the previous comment, Earthjustice also asserted that the assumptions regarding the design and operation of the low-load temperature control system are unsupported. Earthjustice quoted the following passage from the EPA's proposal:

> As described in the S&L report, periods of low load operation generally consist of operation between loads of 138 MW to 270 MW (operation above 270 MW can be considered ''high'' load). Broadly speaking, the temperature in the SCR system will fall below 599 degrees F during these periods of low load operation, which is the minimum temperature required for effective NO_X control. A low load temperature control system increases the temperature at the SCR inlet in order to maintain 599 degrees F, allowing operation of the SCR system during periods of low load. Without this control system, the Coronado Unit 2 SCR system will not operate during periods of low load.

The commenter asserted that these are ''critical and unsupported assumptions.'' Specifically, the commenter stated that ''the minimum operating temperature (MOT) is a function of SCR catalyst design and parameters such as the sulfur content of the fuel,'' and that neither the proposal nor the S&L analysis explained why the MOT is assumed to be 599 degrees F for the SCRs at Units 1 and 2. The commenter noted that the record contains no documentation regarding SCR design from the actual designer of the Unit 2 SCR. The commenter also asserted that the correspondence between MOT and unit load (*i.e.*, that the 599 degrees F MOT corresponds to unit load of 270 MW) is not supported.

Response: We agree with this comment and have requested and received additional documentation from SRP regarding these issues. Included in the docket is a functional description of the Unit 2 SCR system prepared by Riley Power.[30] It indicates that the Unit 2 SCR was designed for a catalyst MOT of 599 degrees F. Also included in the docket is a record of Unit 2's gross load and air preheater temperature readings over an 18-month period from January 2011 to July 2012. As indicated in the spreadsheet and chart attached to this documentation, the majority of these data point to an air preheater temperature of 599 degrees F being achieved at a gross load of 270 MW.

2. Comments on Proposed Emission Limits for Coronado Unit 1

Comment: Earthjustice commented that the proposed emission limit of 0.065 lb/MMBtu was based on Scenario 5c of the S&L analysis, as listed in Table 2 of the proposed rule, which corresponds to a 30-day period of continuous low-load cycling with three cold startup events. The commenter noted that the EPA did not identify a historical 30-day period that corresponded to this scenario. The commenter further asserted that it had ''examined Unit 1 hourly operating data for a three year time period, 2012–2014, from AMPD and found no instances of scenario 5c or even 5b—*i.e.*, two or three cold-starts along with significant low load cycling." The commenter concluded that the highest NO_X limit that could be supported by S&L's analysis was Scenario 5a, *i.e.,* 0.0550 lb/MMBtu. Accordingly the commenter requested that the EPA "either fully support Scenario 5c or accept the NO_X limit associated with 5a—0.0550 lb/MMBtu."

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[27] See spreadsheet ''Startup & Shutdown Data.xls.''

[28] 80 FR 33840, 33980 (June 11, 2015).

[29] Excess emissions from malfunctions events are, by definition, unforeseeable and extremely variable, and therefore generally cannot be specifically accounted for within an emission limit. Sources are required to meet the normally applicable emission limits during malfunctions. Regulators may elect to exercise enforcement discretion in such circumstances, and sources retain the ability to assert any legal or equitable defenses to liability or remedies that they may have in an enforcement proceedings, consistent with CAA sections 113 and 304.

[30] See 1.1.1 SCR Reactor.pdf, Unit 2 Temperature vs. Load PI Data.xlsx, and email from Barbara Sprungl, SRP, to Eugene Chen, EPA, regarding SCR MOT (February 19, 2016).

Response: We partially agree with this comment. As we stated in our proposed rule, the particular scenario that the proposed emission limit of 0.065 lb/MMBtu is based upon, Scenario 5c of the S&L analysis, includes unit operating conditions (30 days of continuous low-load cycling and three cold startup events) that have not historically occurred in a single 30 BOD period. We disagree with the commenter's assertion, however, that an emission limit of 0.055 lb/MMBtu would be the appropriate emission limit.

The commenter noted that it was unable to identify a 30-day period with two or three cold starts along with significant low-load cycling at Unit 1 during the period from 2012–2014. We reviewed operating data beyond the most recent 3-year period and found three 30-day periods with multiple startup events.[31] As indicated in AMPD data and the information provided by SRP in its April 24, 2014, letter, Unit 1 has experienced 30-day periods that included two cold starts, as well as one cold start with multiple warm starts (approximately three to six). In general, the total amount of NO_X emissions from a warm startup is smaller than a cold startup, in large part due to the longer duration of cold startup events. In this case, the total amount of NO_X generated by the actual historical operating scenario of one cold startup and multiple warm startups (approximately three to six) is similar to the total amount that would be generated under Scenario 5c (*i.e.,* three cold startups), and supports the use of three cold startups as a conservative assumption concerning future operations at Unit 1.

Similarly, the commenter asserted that it had not identified a 30-day period of significant low-load cycling at Unit 1 during the period from 2012–2014. We agree that historical operations at the Coronado units do not reflect 30 consecutive days of low-load cycling operations. As noted in our proposed rule, this assumption is based on SRP's expectation that the Coronado units will experience greater periods of low-load cycling operation in the future, as well as nonoperation, given the expanded role of renewable energy and reduced reliance on fossil fuels in electricity generation. More recent data from the first 9 months of 2015 indicate increased low-load cycling operations and startup events relative to historical patterns.[32] At most, however, this represents 3 to 5 days of continuous low-load cycling, not 30. Therefore, 30 days of low-load cycling is likely to be an overestimate of the number of low-load cycling days that will be exhibited in future operations at Unit 1.

In sum, based upon historical operations, particularly the modest amount of low-load cycling operations engaged in by the Coronado units, Scenario 5c (*i.e.,* an operating scenario of three cold startups and 30 days of low-load cycling), represents an upper-end estimate of low-load Unit 1 operations and startups at Unit 1. However, for the reasons described in response to comments from SRP below, we do not agree with Earthjustice that a rolling 30–BOD limit of 0.065 lb/MMBtu for Unit 1, which is based upon Scenario 5c, is insufficiently stringent.

Comment: SRP asserted that the EPA's statement that an additional compliance margin was not appropriate for Coronado Unit 1, given the conservative nature of the assumptions in the S&L analysis, was inconsistent with the EPA's acknowledgment that S&L's analysis provided a reasonable estimate of average SCR performance. The commenter argued that "an emission limit that reflects 'average' SCR performance—even coupled with a 30-day averaging period—does not adequately account for performance on either end of the spectrum—minimum emissions as well as maximum emissions" and that the EPA "must establish a BART emission limit that SRP can comply with at all times (*i.e.,* a limit that is closer to the maximum emissions that can be anticipated)."

Response: We disagree with this comment. The commenter is correct, in literal terms, that an "average" emission rate of 0.065 lb/MMBtu is not the same as the maximum emission rate, and an emission limit based on an "average" emission rate will not account for all possible expected emission profiles. We do not agree, however, that this demonstrates that the proposed limit does not adequately account for the expected emissions on the upper end of the Unit 1's operating spectrum. Although the proposed limit of 0.065 lb/MMBtu is based upon an average emission rate, it represents the average emission rate of a very conservative operating scenario. As described in previous responses to comments, the specific set of circumstances that form the basis for the proposed limit have not historically occurred at either of the Coronado units.[33] Although SRP has provided information indicating that it expects the Coronado units to be engaged in expanded amounts of load-following service,[34] it has provided no evidence that the units are likely to continuously operate at low-load cycling.[35] Given the conservative nature of these assumptions, we consider the proposed rolling 30–BOD emission limit of 0.065 lb/MMBtu to account adequately for the operations of Unit 1 and, as explained further below, to address sources of uncertainty in SRP's emission analysis that may not have been accounted for in the S&L analysis.

Comment: SRP expressed agreement with the EPA's finding that S&L's analysis produced a reasonable estimate of average SCR performance for Unit 1, but asserted that the S&L report was "inadequate to determine an emission limit that SRP can meet on a continuous basis" because it only addressed variability due to changes in load and "failed to address other factors that can and do affect emission rates." SRP indicated that it had submitted evidence, including the 2013 RMB Report showing that "the 30-day average emissions rates from comparable units (*i.e.,* same furnace design, comparable size, equipped with SCR) regularly exceed the proposed SRP limit of 0.065 lb/MMbtu." Specifically, SRP asserted that "the RMB analysis plainly shows that emissions from Unit 1 reasonably should be expected to exceed the proposed 0.065 lb/MMbtu emission limit, even with a 30-day averaging period." The commenter argued that "failing to address the impact that process and measurement variability can have on the reported emissions would be inconsistent with how EPA has handled the issue in other rulemakings." Based on the 2013 RMB Report and an additional memo from RMB enclosed with the comment letter,[36] the commenter concluded that "a value of 0.080 lb/MMbtu is a reasonable estimate of the lowest achievable BART NO_X limit for Unit 1."

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[31] See November 2011, April 2011, July 2009 in "Coronado NO_X Emission Data (daily)."

[32] See spreadsheet Coronado 2015–09 (hourly).xls.

[33] Specifically, three cold startup events and 30 days of low-load cycling operations.

[34] *See* Letter from Kelly Barr, SRP, to Deborah Jordan, EPA (April 28, 2014).

[35] One of the assumptions underlying Scenario 5c is low-load cycling for 30 days, which, for purposes of developing a rolling 30–BOD limit, represents continuous operation at low-load cycling.

[36] Technical Memorandum from RMB to SRP, Comments on Proposed Revisions to the Regional Haze Federal Implementation Plan for Arizona (May 15, 2015).

SRP also commented that RMB provided a UPL statistical analysis "merely as a check against its primary analysis, which is analytical assessment of years of available emissions data from comparable units." The commenter noted that:

> In its analytical assessment, RMB simply determined the 99th percentile value of hundreds of 30-day average emission rates that it was able to calculate from the available emission data. There was no need to rely on a statistical tool such as the UPL to predict what the 99th percentile would be because there are adequate data to calculate that value directly.

The commenter concluded that the UPL was in fact not appropriate because the 99th percentile emissions rate could be analytically derived.

Response: We disagree with this comment. There are two separate issues arising from the RMB report: The NO_X emission rates achieved by comparable SCR-equipped units [37] and the variability derived from the RMB report (and inclusion of an appropriate compliance margin).[38] With regard to the former issue, although similar SCR-equipped units examined by RMB exhibited NO_X emission rates that were routinely above 0.065 lb/MMBtu, we disagree that this represents clear evidence that Unit 1 will exceed the proposed 30–BOD limit of 0.065 lb/MMBtu. While the units selected by RMB for review had similar design characteristics to Coronado Unit 1, the analysis did not examine one crucial variable: The design emission rate of the SCR systems. For example, S&L stated that the design target of the Pleasant Prairie Unit 1 SCR was 0.050 lb/MMBtu. By contrast, the stated design target of the Coronado Unit 1 SCR is 0.030 lb/MMBtu.[39] Because the SCR on the Coronado Unit 1 is designed to achieve a lower NO_X emission rate, we do not consider the fact the actual NO_X emission rates of these other SCR-equipped units exceed 0.065 lb/MMBtu to be directly relevant to Coronado Unit 1's ability to meet a rolling 30–BOD limit of 0.065 lb/MMBtu.

With regard to the variability derived by the RMB report, we agree that measurement and process variability should be accounted for in establishing an emission limit that is achievable, and that incorporates an appropriate compliance margin. The UPL methodology would be one way to account for the possible impact of process and measurement variability. As explained in our proposed rule, however, we do not believe it is necessary or appropriate to use the UPL methodology in this instance, given the size and scope of the data set available. The commenter provided no assertions or arguments that contradict our finding that use of the UPL methodology is inappropriate in this instance. Indeed, the commenter actually acknowledges that use of the UPL is not appropriate in this instance given the available data.

For similar reasons, we disagree with SRP's suggestion that we should simply have used the 99th percentile emissions rate. As with UPL analyses, the EPA has previously used the 99th percentile (described in some contexts as the 99th confidence level) when establishing emission limits for entire source categories based on emission data set collected from a subset of the sources in each category. In such cases, it is appropriate to take additional measures, such as use of the 99th confidence level, to address concerns about variations not captured or accounted for in the development of the data set. In this instance, by contrast, the proposed 0.065 lb/MMBtu emission limit was developed from emission data from the specific unit in question—either from CEMS data collected from Unit 1 or from SCR vendor estimates developed specifically for Unit 1. Although we recognize that this does not eliminate all concerns regarding variability and uncertainty, we do not consider the measures proposed by the commenter to be appropriate in this instance given the substantially site-specific nature of the data underlying the proposed emission limit. Moreover, neither S&L nor RMB calculated a 99th percentile emission rate for Coronado Unit 1 based on the use of SCR. Accordingly, we do not agree that use of the 99th percentile emissions is necessary to account for process and measurement variability.

More broadly, while we have not explicitly quantified a portion of the compliance margin specifically to account for process and measurement variability (*e.g.,* the additional 15–25 percent proposed by the commenter), we consider the conservative nature of the operating assumptions underlying the 0.065 lb/MMbtu limit to be sufficient to account for this variability. As noted in previous responses, 0.065 lb/MMbtu is based on operating assumptions that have not historically occurred for either of the Coronado units and that have not been demonstrated to be likely to occur on a regular basis in the future. In addition, 0.065 lb/MMBtu is based on an assumption of a steady-state full load emission rate of 0.040 lb/MMBtu, which is 0.01 lb/MMBtu higher than the performance guarantee of the SCR system of 0.030 lb/MMBtu.[40] As noted in the S&L report, this increase above the performance guarantee is intended to account for variations that will occur with actual controlled emissions.[41] We consider the conservatism built into this assumption and the previously described assumptions concerning startups and low-load cycling to be sufficient to account for process and measurement variability and provide an adequate compliance margin.

Accordingly, we are finalizing a rolling 30–BOD NO_X emission limit of 0.065 lb/MMBtu for Coronado Unit 1, as proposed.

3. Comments on Proposed Emission Limits for Coronado Unit 2

Comment: SRP expressed support for the EPA's proposed emission limit of 0.080 lb/MMbtu for Coronado Unit 2. SRP noted that it had already installed SCR and a low-load temperature control system on Unit 2 and that it was unable to meet an emission limit lower than the 0.080 lb/MMbtu limit in the Consent Decree. SRP also expressed support for the proposed work practice standard and additional language addressing operation using the low-load temperature control system.

Response: We acknowledge SRP's support. We wish to clarify that the revised work practice standard applies to both Coronado units, as does the analogous language in Coronado's existing Title V Permit.[42]

Comment: Earthjustice stated that it had examined emission data for Unit 2 from the APMD for the period following installation of SCR (*i.e.,* roughly June 1 to December 31, 2014). The commenter provided a table of hourly reported NO_X rates for Unit 2, sorted by gross load in the range of 138 to 270 MW, which is the load range in which the low-load temperature control system would be expected to operate. The commenter identified several periods of time in which Unit 2 operated in this load range, but emitted higher NO_X rates that indicated that the SCR was not operating in this load range. Based on this information, the commenter asserted that the low-load temperature control system is not operating as intended.

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[37] See Table 4 in 2013 RMB Report. To summarize, the mean NO_X emission rates of the similar SCR-equipped units identified by RMB range from 0.063 to 0.092 lb/MMBtu.

[38] See 2013 RMB Report starting at page 7. To summarize, RMB's analysis asserts that a 15% upward adjustment is appropriate, followed by an additional upward rounding to the next numerical interval, which represents an additional 10%.

[39] See Table 1 in 2013 S&L Report.

[40] 2013 S&L Report Table 1.

[42] *See* Specific Condition II.E.2.c, Title V Operating Permit No. 52693, issued December 6, 2011 ("The Permittee shall continuously operate *each NOx control* at all times the unit it serves is in operation consistent with technological limitations, manufacturer's specifications, and good engineering and maintenance practices for minimizing emissions to the extent practicable" (emphasis added)).

Further, the commenter asserted that had the low-load temperature control system operated at this load range, the corresponding NO_X rates would have been much lower and the resulting 30-day average NO_X rates for these periods would also be lower. Earthjustice also stated that, in order to simulate proper low-load temperature control system operation, it had substituted the NO_X value of 0.049 lb/MMBtu (the average of 0.039 and 0.059, the lowest and highest NO_X rates corresponding to 270 MW) for all loads in the 138–270 MW range and computed the 30-day average NO_X rate, including startup, shutdown, and malfunctions (excluding some anomalous data). Based upon the results of this substitution, the commenter asserted that the highest 30-day average using these results was 0.0621 lb/MMBtu, and that the appropriate NO_X limit for Unit 2 would be 0.0650 lb/MMBtu, allowing for a reasonable compliance margin.

Response: We disagree with the commenter's assertion that the noted instances indicate that the low-load temperature control system was not operating as intended. The commenter has accurately identified certain operating hours with load values that fall within a range of 138 to 270 MW. We agree that these instances exhibit NO_X emission rates that are consistent with nonoperation of the SCR system. We note, however, that these instances do not correspond to periods of low-load cycling (*i.e.,* periods of extended operation at low-load electricity generation). Rather, the instances identified by the commenter correspond to startup/shutdown events.

For example, the first instance listed by the commenter (hours 13 to 15 on June 1, 2014) are the final 3 hours of a 15-hour-long startup event, in which Unit 2 starts at zero load, proceeds to full load, and engages in high-load cycling on a continuous basis for the next 5 weeks.[43] The 3 hours of low load are part of the process of ramping the boiler up to high load and/or full load, and are not part of a period of actual low-load operation. The other instances identified by the commenter on July 13, July 18, July 22, September 11, September 15, November 13, and November 17, 2014, are similarly all startup/shutdown events. As described in our 2015 proposed rulemaking, the low-load temperature control systems on the Coronado units function during periods of low-load cycling by the boilers. During these periods of low load, the boiler exhaust falls below the 600 degree F minimum operating temperature of the SCR system. By using a portion of the steam generated by the boiler to reheat the exhaust stream up to 600 degrees F, the low-load temperature control system allows operation of the SCR system during periods of low-load cycling. The availability of steam reheat is a crucial element of this system. In a boiler startup event, boiler steam may not be available in sufficient quantity or temperature to allow operation of the temperature control system, because the boiler is starting up.

More broadly, the commenter raises concerns regarding whether these instances of SCR nonoperation are indicative of the low-load temperature control system being improperly installed or operated. The 2014 AMPD data supplied by the commenter do not appear to contain any periods of operation that correspond to low-load cycling. Therefore, it is not possible to readily evaluate the effectiveness of the low-load temperature control system based on these data alone. In preparing our final action on reconsideration, we have reviewed 2015 AMPD data in order to determine if the low-load temperature control system is being operated during periods of low-load cycling. We have identified several periods of low-load cycling in 2015, and note that the emission rates achieved during these periods are consistent with operation of the SCR system.[44] This is consistent with the analyses provided by SRP, which indicate that the low-load temperature control system is intended to operate during periods of low-load cycling.[45]

We also disagree with the commenter's second assertion, that 30-day NO_X emission rates for Unit 2 would be lower had the low-load temperature control system operated in these load ranges, and that the appropriate NO_X limit for Unit 2 is 0.065 lb/MMBtu. As described in the previous paragraphs, we note that the instances identified by the commenter correspond to startup/shutdown events and not periods of low-load cycling. As a result, we do not consider the information provided to be sufficient to demonstrate that the SCR should have operated during the instances identified by the commenter, and that a lower 0.065 lb/MMBtu limit is achievable by Unit 2.

In sum, in our 2015 proposed action on reconsideration, we proposed a BART limit of 0.080 lb/MMBtu for Unit 2 based on information and analysis provided by SRP indicating that the Unit 2 SCR system was designed to meet the 2012 Consent Decree emission limit of 0.080 lb/MMBtu, and that SRP had since installed a low-load temperature control system on Unit 2 to meet that emission limit. Because the information provided by the commenter does not alter the data, analysis, or reasoning underlying this proposed limit, we are finalizing a rolling 30–BOD limit of 0.080 lb/MMBtu for Unit 2.

C. Comments on Proposed Removal of Affirmative Defense for Malfunctions

Comment: SRP urged the EPA to retain the affirmative defense for excess emissions due to malfunctions as part of the Arizona Regional Haze FIP. The commenter made several arguments in support of its position.

First, the commenter argued that the court's decision in *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014) does not compel the EPA to remove the affirmative defense provision from the Arizona Regional Haze FIP because the decision applies only to an EPA rulemaking under section 112 and is not binding precedent in the Ninth Circuit. The commenter further argued that by removing the affirmative defense provision, the EPA "ignores its own longstanding policy supporting affirmative defenses in situations beyond the owner's or operator's control, as well as decisions from other Courts of Appeals upholding affirmative defenses." Referring to the EPA's 1999 SSM Guidance,[46] the commenter stated that "[s]ince the early 1980s, EPA has consistently maintained the imposition of penalties for exceedance of an emission standard that is caused by circumstances beyond the owner's or operator's control is not appropriate." Citing *Arizona Public Service Co.* v.

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[43] By comparison, a typical low-load cycling operation would consist of the boiler starting at gross load levels above 270 MW, dropping to below 270 for several hours, and finally returning to load levels above 270 MW.

[44] See Coronado 2015–09 (hourly).xls. May 24, May 27, May 28, June 8, August 25, September 7, September 11, September 14, and September 15, 2015. NO_X emission rates observed during these periods of low-load cycling range from 0.028 to 0.060 lb/MMBtu, which based on the corresponding heat rates are emission rates that indicate operation of the SCR system.

[45] See Letter from Kelly J. Barr, SRP, to Deborah Jordan, EPA (April 28, 2014) page 4 and 2013 S&L Report page 6.

[46] In particular, the commenter cited EPA's 1999 SSM Guidance (Memorandum to EPA Regional Administrators, Regions I–X from Steven A. Herman and Robert Perciasepe, USEPA, Subject: State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown (September 20, 1999).

EPA, 562 F.3d 1116, 1129–30 (10th Cir. 2009), *Montana Sulphur & Chemical Co.* v. *EPA*, 666 F.3d 1174, 1192–93 (9th Cir. 2012), and *Luminant Generation* v. *EPA*, 714 F.3d 841, 851–53 (5th Cir. 2013), the commenter asserted that the EPA's prior SSM policy, which interpreted the CAA to allow affirmative defense provisions in SIPs, had been upheld by three separate U.S. Courts of Appeals. The commenter further argued that the EPA should not apply the D.C. Circuit decision in *NRDC* "where controlling precedent from the U.S. Court of Appeals for the Ninth Circuit condones EPA's use of affirmative defenses."

Second, SRP noted that, in the proposed SSM SIP Call, the EPA had only proposed to interpret the CAA to bar affirmative defense type provisions in SIPs and had also proposed to provide states 18 months to submit SIP revisions to remove affirmative defenses for exceedances due to malfunctions. The commenter thus asserted that the EPA should allow the SSM SIP Call rulemaking to proceed, rather than "predetermine the outcome of that rulemaking by removing the affirmative defense from the Arizona Regional Haze FIP far in advance of [the] timeline applicable to the SIP call rulemaking."

Third, SRP asserted that "[t]he U.S. Constitution also supports retention of the affirmative defense for malfunctions." In particular, the commenter noted that the U.S. Supreme Court has held that the Eighth Amendment, including protections against excessive fines and punishments, may apply to government action in a civil context as well as in a criminal context. SRP claimed that significant penalties are not proportional to an offense caused by unavoidable events, such as excess emissions during malfunction events. Furthermore, the commenter argued that "imposing liability for 'unavoidable' and therefore innocent conduct would infringe on substantive due process principles under the Fifth Amendment." SRP asserted that affirmative defense provisions "avoid unjust punishment while at the same time placing on the source the burden of demonstrating that the offense actually was 'unavoidable' (and that punishment therefore would be unjust)." Again citing *Montana Sulphur*, the commenter asserted that providing an affirmative defense is the "minimum protection EPA or the state must provide to avoid infringing constitutional rights."

Finally, SRP stated that the affirmative defense "was an integral part of the agreed-upon emission limits established in the [Coronado] Consent Decree" and "was integral to the analyses submitted by SRP in support of its Petition for Reconsideration and the proposed emission limits SRP submitted to EPA for NO_X." The commenter asserted that without such an affirmative defense, "the emission limits identified as feasible and appropriate by S&L and RMB would have undoubtedly been higher." The commenter argued that "[i]f EPA now removes the affirmative defense from the Arizona Regional Haze FIP for [Coronado], EPA must modify upward the emission limits for NO_X to account for that action."

Response: We do not agree with SRP's arguments in favor of retaining the affirmative defense for violations due to malfunctions in the Arizona Regional Haze FIP or its assertion that the emission limits should be revised upward in light of removal of the affirmative defense.

First, we do not agree with the commenter's suggestion that we are free to ignore the *NRDC* decision in the context of promulgating or revising a FIP. The fact that the decision pertained to a rulemaking by the EPA under section 112 is irrelevant. As explained in our proposal, *NRDC* turned on an analysis of CAA sections 113 and 304. These provisions apply with equal force to a civil action brought to enforce the provisions of a FIP. The logic of the court's decision thus applies to the promulgation of a FIP, and precludes the EPA from including an affirmative defense provision in a FIP. As explained in the final SSM SIP Call:

> The EPA is revising its interpretation of the CAA with respect to affirmative defenses based upon a reevaluation of the statutory provisions that pertain to enforcement of SIP provisions in light of recent court opinions. Section 113(b) provides courts with explicit jurisdiction to determine liability and to impose remedies of various kinds, including injunctive relief, compliance orders and monetary penalties, in judicial enforcement proceedings. This grant of jurisdiction comes directly from Congress, and the EPA is not authorized to alter or eliminate this jurisdiction under the CAA or any other law. With respect to monetary penalties, CAA section 113(e) explicitly includes the factors that courts and the EPA are required to consider in the event of judicial or administrative enforcement for violations of CAA requirements, including SIP provisions. Because Congress has already given federal courts the jurisdiction to determine what monetary penalties are appropriate in the event of judicial enforcement for a violation of a SIP provision, neither the EPA nor states can alter or eliminate that jurisdiction by superimposing restrictions on that jurisdiction and discretion granted by Congress to the courts. Affirmative defense provisions by their nature purport to limit or eliminate the authority of federal courts to determine liability or to impose remedies through factual considerations that differ from, or are contrary to, the explicit grants of authority in section 113(b) and section 113(e).[47]

Therefore, the EPA cannot include any such affirmative defense provision in a FIP.

The commenter has offered nothing to refute this interpretation of the CAA. Instead, the commenter suggests that the EPA should not apply the *NRDC* decision in this instance because of "controlling precedent" from the Ninth Circuit, namely the *Montana Sulphur* decision. As relevant here, that decision involved a challenge by Montana Sulphur to the EPA's imposition of limits on flaring emissions during SSM events. In responding to Montana Sulphur's argument that these limits were infeasible, "the EPA acknowledge[d] that violations are likely inevitable, but relie[d] on the provision of an affirmative defense to compensate for the infeasibility problem."[48] Significantly, however, *Montana Sulphur* did not involve a challenge to inclusion of the affirmative defense in a FIP. On the contrary, Montana Sulphur argued that the affirmative defense in the FIP should have been *extended* to cover injunctive relief in addition to monetary penalties.[49] The court rejected this argument and concluded that the EPA had reasonably interpreted the CAA to limit the extent of the affirmative defense as part of imposing continuous limits on emissions.[50] However, because no party directly challenged the legal basis for the affirmative defense itself, the court did not have occasion to consider whether the affirmative defense in the FIP contravened CAA sections 113 and 304. Therefore, we do not agree that *Montana Sulphur* constitutes controlling precedent on the issue of whether the EPA may promulgate an affirmative defense in a FIP.

With regard to the other judicial decisions cited by the commenter, the *Luminant* decision did not involve a FIP at all, but concerned the EPA's evaluation of affirmative defense provisions in a SIP context. In that decision, the court upheld the EPA's disapproval of an affirmative defense provision applicable to violations due to emissions during startup, shutdown and maintenance events, and the EPA's approval of an affirmative defense provision applicable to violations due to emissions during malfunctions. In both instances, the court deferred to the EPA's then current interpretation of the CAA as a reasonable reading of ambiguous provisions. Subsequent to that decision, however, the DC Circuit issued its opinion in *NRDC.* In our Supplemental Proposal and Final SSM SIP Call, we explained at length why we now consider the court's reasoning in the *NRDC* decision to be the better reading of the CAA.[51] Thus, the EPA has now changed its interpretation of the CAA with respect to the permissibility of affirmative defense provisions in SIPs and has directed the affected state to remove the affirmative defense provision at issue in the *Luminant* decision from its SIP in the final SSM SIP call.

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[47] 80 FR 33851–33852.

[48] 666 F.3d at 1192–93.

[49] Id. at 1193. The EPA's position in that case was based on the 1999 SSM Policy, which has now been replaced by the EPA's SSM SIP Policy as of 2015. See 80 FR 33977–33982.

[50] *Id.*

Finally, while the *Arizona Public Service* case did involve a challenge to an affirmative defense in a FIP, it did not involve a challenge to the statutory basis for such a defense.[52] Rather, Arizona Public Service argued that "the EPA must justify inclusion of the affirmative defense with a factual basis for presuming that excess emissions are the fault of APS, and requiring APS to prove otherwise" and that "the EPA offered no defense to this burden-shifting affirmative defense." [53] The court rejected both of these arguments. However, as with *Montana Sulphur,* no party argued that the affirmative defense at issue was inconsistent with the enforcement structure of CAA sections 113 and 304, so the *Arizona Public Service* court did not have occasion to consider this question. Accordingly, the *Arizona Public Service* decision is not directly on point with regard to whether the EPA is authorized to include an affirmative defense in a FIP. Therefore, none of the cases cited by the commenter compel or persuade the EPA to adopt an interpretation of the CAA with regard to affirmative defenses that differs from the interpretation set forth in the SSM SIP Call Final Rule preamble, as quoted previously.

Second, as noted previously, the EPA has finalized the SSM SIP Call and determined that AAC R18–2–310(B) and AAC R18–2–310(C) are substantially inadequate to meet CAA requirements.[54] Arizona must submit a SIP revision to remove or revise these provisions by November 22, 2016. To the extent that the commenter disagrees with the EPA's interpretation of the CAA in the SSM SIP Call, and disagrees with the EPA's application of that interpretation to AAC R18–2–310(B) and AAC R18–2–310(C), that decision may be challenged in the DC Circuit. However, the EPA is not obligated to wait until that deadline for SIP revisions in response to the SSM SIP Call passes to remove these provisions from the Arizona Regional Haze FIP. On the contrary, having made a final determination that affirmative defense provisions are inconsistent with CAA requirements, we believe it is appropriate to expeditiously remove the affirmative defense provision from the Arizona Regional Haze FIP. The FIP is the EPA's own rulemaking, which it is now conforming to the requirements of the CAA.

Third, the commenter's constitutional arguments appear to suggest that the existing CAA enforcement provisions are facially unconstitutional. We do not agree. The CAA does not mandate that any penalty be automatically assessed for a violation. Rather, the CAA establishes a maximum civil penalty in section 113(b), but then expressly provides in section 113(e) the criteria that the EPA (in administrative enforcement) or the courts (in judicial enforcement) "shall take into consideration (in addition to other factors as justice may require)." These criteria explicitly include consideration of "good faith efforts to comply." Whether in administrative enforcement or judicial enforcement, there is a process through which the alleged violator may raise any legal or equitable arguments it may have based on the facts and circumstances of the violation. Thus, the CAA on its face does not mandate the imposition of any penalty automatically, much less one that is *per se* excessive. Notably, the commenter does not elaborate on how or why it believes the statutory penalty provisions of the CAA are facially unconstitutional. To the extent that the commenter is raising an "as applied" claim of unconstitutionality, any such claim can be raised in the future in the context of a specific application of the statute in an enforcement action.

Fourth, we acknowledge that, as in the *Montana Sulphur* example cited by the commenter, the EPA has previously provided affirmative defense provisions as a mechanism to mitigate penalties where a violation was beyond the control of the owner or operator. Contrary to the commenter's suggestion, however, the EPA did not indicate that such provisions were constitutionally mandated. These actions were premised upon the EPA's prior interpretation of the CAA to permit such affirmative defense provisions under very narrow circumstances. More significantly, these actions predated the *NRDC* decision and, as explained previously, the EPA no longer considers affirmative defense provisions to be consistent with the enforcement provisions of the CAA. Furthermore, the EPA believes that the penalty criteria in section 113(e) perform a similar function to the affirmative defense provisions previously promulgated by the EPA. The commenter does not explain why these explicit statutory factors do not provide sufficient protection from the imposition of allegedly unconstitutionally excessive penalties.

Finally, we do not agree that removal of the affirmative defense from the Arizona Regional Haze FIP necessitates an increase in the emission limits for NO_X for Coronado Units 1 and 2. Neither the 2013 S&L Report nor the 2013 RMB Report indicates that it relied on the existence of such a defense in evaluating what emission limits were achievable at the Coronado units. Moreover, the affirmative defense in the FIP applied only to violations due to emissions during malfunctions, which (among other criteria) must have "resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment" and "not stem[med] from any activity or event that could have been foreseen and avoided, or planned." [55] Nothing in the CAA, the RHR, or the BART Guidelines indicates that BART emissions limits should be set at a level that accommodates all emissions during such unforeseeable events. Finally, we note that, if Coronado were to violate a BART emission limit due to a malfunction, SRP retains the ability to defend itself in an enforcement action and to oppose the imposition of particular remedies or to seek the reduction or elimination of monetary penalties, based on the specific facts and circumstances of the event. To the extent that a violation is the result of a genuine malfunction, the EPA anticipates that the state, citizen suit plaintiffs, and the EPA itself will likely exercise enforcement discretion. To the extent that any party elects to pursue enforcement in such circumstances, however, the CAA already authorizes the courts to determine whether parties should be held responsible for such violations and to impose remedies or penalties only as may be appropriate, given the relevant facts and circumstances. As noted previously, under CAA section 113(e), federal courts are required to consider the enumerated statutory factors when assessing monetary penalties, including "such other factors as justice may require." Accordingly, we do not consider it necessary or appropriate to revise the BART emission limits due to the removal of the affirmative defense for malfunctions.

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[51] See 79 FR 55920, 55931–55934 (September 17, 2014) and 80 FR 33856–33857.

[52] *Arizona Public Service Co.* v. *EPA,* 562 F.3d 1116, 1130 (10th Cir. 2009).

[53] *Id.* (internal quotations omitted).

[54] 80 FR 33840, 33971 (June 12, 2015).

[55] AAC R18–2–310(B)(1) and (8).

It should also be noted that our removal of the affirmative defense from the Arizona Regional Haze FIP does not alter the terms of the Coronado Consent Decree, which includes an affirmative defense applicable only to stipulated penalties for violations of the Consent Decree itself.[56] This provision of the Consent Decree affects only whether SRP must pay stipulated penalties under the Consent Decree and does not provide a defense to otherwise applicable CAA penalties.[57] Thus, the provision operates as a liquidated damages clause applicable only to the penalties imposed for violations of the Consent Decree and does not purport to alter the jurisdiction of the courts to impose penalties for violations of CAA requirements. Moreover, this provision was sanctioned by the United States District Court for the District Of Arizona, which entered the Consent Decree. Therefore, it does not raise the same concerns about limiting the jurisdiction of courts that are raised by the affirmative defense provision in the FIP.

In sum, we do not agree that the affirmative defense applicable to violations due to malfunctions should be retained in the Arizona Regional Haze FIP or that the emission limits in the FIP should be revised upward in light of the removal of the defense.

Comment: Earthjustice expressed support for the EPA's proposal to remove the affirmative defense applicable to violations due to malfunctions from the FIP. Citing the *NRDC* decision relied upon by the EPA in the proposal, the commenter asserted that affirmative defenses for violations due to malfunctions like that previously incorporated into the Arizona Regional Haze FIP are prohibited by the plain language of the CAA. Earthjustice further argued that such affirmatives defenses are unnecessary because courts do not impose penalties for truly unavoidable and unforeseeable violations. Finally, the commenter urged the EPA to finalize its proposal in a separate action to find the affirmative defense for violations due to malfunctions in AAC Code R18–2–310(C) and the similar affirmative defense for violations due to startup and shutdown in AAC R18–2–310(B) substantially inadequate to meet CAA requirements as part of the SSM SIP Call.

Response: We agree with the commenter for the reasons detailed in the previous response. We note that the EPA has already finalized the SSM SIP Call and determined that AAC R18–2–310(B) and AAC R18–2–310(C) are substantially inadequate to meet CAA requirements.[58] Accordingly, the EPA has already directed the state to remove those existing affirmative defense provisions from the SIP, consistent with EPA's action to remove the affirmative defense for violations during malfunctions from the Arizona Regional Haze FIP.

D. Other Comments

Comment: SRP asserted that the EPA should defer to Arizona's NO_X BART determination for Coronado, noting that this determination was less stringent than the requirements of the Consent Decree.

Response: This comment is outside the scope of the proposed action. The EPA is not reconsidering our prior final action disapproving Arizona's NO_X BART determinations for Coronado Units 1 and 2. Furthermore, as explained in our proposal, we are not reconsidering our determination that BART for Coronado Units 1 and 2 is an emission limit consistent with the use of SCR, LNB with OFA, and low-load temperature control systems.[59] Finally, even if this comment were relevant to this action, we do not agree that Arizona's BART determinations for NO_X at Coronado were reasonable or that they complied with the applicable statutory and regulatory requirements, for the reasons set forth in our prior proposed and final actions disapproving those determinations.[60]

Comment: ECO commented that the EPA's proposed action on reconsideration was "a critical step toward insuring the economic viability" of Coronado and urged the EPA to finalize the proposal.

Response: We acknowledge ECO's support for our action on reconsideration.

V. Final Action

The EPA is taking final action to revise the Arizona Regional Haze FIP to replace a plant-wide BART compliance method and emission limit for NO_X on Units 1 and 2 at Coronado with a single-unit compliance method and emission limit on each of the units. For the reasons described in our proposal and in our responses to comments above, we are finalizing emission limits of 0.065 lb/MMBtu for Unit 1 and 0.080 lb/MMBtu for Unit 2 with compliance based on a rolling 30–BOD basis. This revision constitutes our final action on SRP's petition for reconsideration of the FIP. We are also finalizing our proposals to remove the affirmative defense for malfunctions in the FIP and revise the work practice requirement that applies to Coronado under the FIP.

We find that this revision will not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement of the CAA. The Arizona Regional Haze FIP, as revised by this action, will result in a significant reduction in emissions compared to current levels (roughly 5,000 tpy). Although this revision will allow a marginal increase in emissions after December 2017 from the Coronado facility as compared to the prior FIP (roughly 233 tpy), the FIP as a whole will still result in an overall NO_X reductions from Coronado compared to those currently allowed. In addition, the area where Coronado is located has not been designated nonattainment for any NAAQS. Thus, the revised FIP will ensure a significant reduction in NO_X emissions compared to current levels in an area that has not been designated nonattainment for the relevant NAAQS at those current levels. Likewise, for the reasons explained in our proposal and summarized in section III.D, the revision will not interfere with any other applicable CAA requirements.

VI. Environmental Justice Considerations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. We expect that Coronado will install the same control technology in order to meet the revised emission limits as would have been necessary to meet the previously finalized limits. As noted previously, this revision to the FIP will allow for an increase in NO_X emissions of roughly 233 tpy compared to the original Arizona Regional Haze FIP.[61] Although this is a not a trivial amount of emissions, it is relatively small compared to the facility's total emissions. In particular, 233 tpy is equivalent to about three percent of the 7,300 tpy of NO_X that the facility is currently allowed to emit under the Coronado Consent Decree.[62] Furthermore, total NO_X emissions from the facility following full implementation of the FIP will be roughly 2,275 tpy, a decrease of over 5,000 tpy compared to the amount the facility is presently allowed to emit. In sum, while this revision will allow for a marginal increase in emissions compared to the prior FIP, it will still ensure a significant reduction in emissions compared to present levels. Thus, the FIP, as revised by this action, increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

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[56] Consent Decree paragraph 107.

[57] *See, e.g., id.* paragraph 106.

[58] 80 FR 33840, 33971 (June 12, 2015).

[59] 80 FR 17013.

[60] 77 FR 42834, 77 FR 72512.

[61] 80 FR 17010.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. This rule applies to only two facilities and is therefore not a rule of general applicability.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule applies to only two facilities. Therefore, its recordkeeping and reporting provisions do not constitute a "collection of information" as defined under 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on small entities. Firms primarily engaged in the generation, transmission, and/or distribution of electric energy for sale are small if, including affiliates, the total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. Each of the owners of facilities affected by this rule, SRP, APS and PacifiCorp, exceeds this threshold.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on any Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. The EPA is not revising any technical standards or imposing any new technical standards in this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. The results of this evaluation are contained in section VI previously.

K. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it revises a FIP under CAA section 110(c).

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Visibility.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 29, 2016.

Gina McCarthy,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

■ 2. In § 52.145:

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[62] Coronado Consent Decree, paragraph 44.

■ a. Revise paragraphs (f)(3)(i) and (f)(5)(ii)(A).
■ b. Add paragraph (f)(5)(ii)(B).
■ c. Revise paragraph (f)(10).
■ d. Remove paragraph (f)(11).

The revisions and addition read as follows:

§ 52.145 Visibility protection.

* * * * *

(f) * * *

(3) * * *

(i) *NO_X emission limitations.* The owner/operator of each coal-fired unit subject to this paragraph (f) shall not emit or cause to be emitted NO_X in excess of the following limitations, in pounds per million British thermal units (lb/MMBtu) from any coal-fired unit or group of coal-fired units. Each emission limit shall be based on a rolling 30-boiler-operating-day average, unless otherwise indicated in specific paragraphs.

Coal fired unit or group of coal-fired units	Federal emission limitation
Cholla Power Plant Units 2, 3, and 4	0.055
Coronado Generating Station Unit 1	0.065
Coronado Generating Station Unit 2	0.080

* * * * *

(5) * * *

(ii) * * *

(A) *Cholla Power Plant.* The 30-day rolling average NO_X emission rate for the group of coal-fired units identified as Cholla Power Plant, Units 2, 3, and 4 shall be calculated for each calendar day, even if a unit is not in operation on that calendar day, in accordance with the following procedure: Step one, for each unit, sum the hourly pounds of NO_X emitted during the current boiler-operating day (or most recent boiler-operating day if the unit is not in operation), and the preceding twenty-nine (29) boiler-operating days, to calculate the total pounds of NO_X emitted over the most recent thirty (30) boiler-operating day period for each coal-fired unit; step two, for each unit, sum the hourly heat input, in MMBtu, during the current boiler-operating day (or most recent boiler-operating day if the unit is not in operation), and the preceding twenty-nine (29) boiler-operating days, to calculate the total heat input, in MMBtu, over the most recent thirty (30) boiler-operating day period for each coal-fired unit; step 3, sum together the total pounds of NO_X emitted from the group of coal-fired units over each unit's most recent thirty (30) boiler-operating day period (the most recent 30 boiler-operating day periods for different units may be different); step four, sum together the total heat input from the group of coal-fired units over each unit's most recent thirty (30) boiler-operating day period; and step five, divide the total pounds of NO_X emitted from step three by the total heat input from step four for each group of coal-fired units, to calculate the 30-day rolling average NO_X emission rate for each group of coal-fired units, in pounds of NO_X per MMBtu, for each calendar day. Each 30-day rolling average NO_X emission rate shall include all emissions and all heat input that occur during all periods within any boiler-operating day, including emissions from startup, shutdown, and malfunction.

(B) *Coronado Generating Station.* Compliance with the NO_X emission limits for Coronado Unit 1 and Coronado Unit 2 in paragraph (f)(3)(i) of this section shall be determined on a rolling 30 boiler-operating-day basis. The 30-boiler-operating-day rolling NO_X emission rate for each unit shall be calculated in accordance with the following procedure: Step one, sum the total pounds of NO_X emitted from the unit during the current boiler operating day and the previous twenty-nine (29) boiler operating days; Step two, sum the total heat input to the unit in MMBtu during the current boiler operating day and the previous twenty-nine (29) boiler operating days; Step three, divide the total number of pounds of NO_X emitted from that unit during the thirty (30) boiler operating days by the total heat input to the unit during the thirty (30) boiler operating days. A new 30-boiler-operating-day rolling average NO_X emission rate shall be calculated for each new boiler operating day. Each 30-boiler-operating-day average NO_X emission rate shall include all emissions that occur during all periods within any boiler operating day, including emissions from startup, shutdown, and malfunction.

* * * * *

(10) *Equipment operations*—(i) *Cholla Power Plant.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator of Cholla Power Plant Units 2, 3 and 4 shall, to the extent practicable, maintain and operate each unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Pollution control equipment shall be designed and capable of operating properly to minimize emissions during all expected operating conditions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of each unit.

(ii) *Coronado Generating Station.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator of Coronado Generating Station Unit 1 and Unit 2 shall, to the extent practicable, maintain and operate each unit in a manner consistent with good air pollution control practices for minimizing emissions. The owner or operator shall continuously operate pollution control equipment at all times the unit it serves is in operation, and operate pollution control equipment in a manner consistent with technological limitations, manufacturer's specifications, and good engineering and good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of each unit.

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[FR Doc. 2016–07911 Filed 4–12–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0497; FRL–9944–71–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Nitrogen Compounds State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) submitted by the State of Texas through the Texas Commission on Environmental Quality (TCEQ) on July 10, 2015. The Texas SIP submission revises 30 Texas Administrative Code (TAC) Chapter 117 rules for control of nitrogen compounds to assist the Dallas-Fort Worth (DFW) moderate nonattainment area (NAA) in attaining the 2008 eight-hour ozone (O_3) National

Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on May 13, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2015–0497. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Grady, (214) 665–6745; *grady.james@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "our," or "us" each mean "the EPA."

I. Background

The background for this action is discussed in detail in the December 21, 2015 proposal (80 FR 79279). In that document, the EPA proposed to approve the submitted 30 TAC Chapter 117 SIP revision (submitted on July 10, 2015) as assisting the DFW area into attainment of the 2008 8-Hour O_3 NAAQS.

The Proposal and the technical support documents (TSDs) that accompanied the proposed rule provide detailed descriptions of the revisions and the rationale for the proposed decisions. Please see the docket for these and other documents regarding the Proposal. The public comment period for the Proposal closed on January 20, 2016.

The EPA received one comment email dated December 30, 2015, from TCEQ. The EPA's response to the comment is below.

II. Response to Comments

Comment: There is an error on page 79282 of the **Federal Register** publication in Table 6. The horsepower (hp) rating for turbines under the *Capacity* column should be "hp rating <10,000 hp" and "hp rating ≥10,000 hp" instead of "hp rating ≤10,000 hp" and "hp rating ≥10,000 hp" as is currently printed.

Response: The EPA agrees with the mathematical operator change and notes that the adopted rule submitted to the EPA on July 10, 2015 under § 117.405(b) should read as follows:

(3) Stationary gas turbines:

(A) with a horsepower (hp) rating of less than 10,000 hp, 0.55 lb/MMBtu; and

(B) with a hp rating of 10,000 hp or greater, 0.15 lb/MMBtu.

Please refer to Table 1 below for a list of NO_X emissions specifications for major sources in newly designated Wise County including a change in response to the above comment.

TABLE 1—NO_X EMISSION LIMITS FOR 2008 DFW 8-HOUR O_3 NAA FOR MAJOR SOURCES IN WISE COUNTY

Source	Type	Capacity	NO_X limit	Citation
Process Heaters:		Max Rated Capacity ≥40 MMBtu/hr	0.10 lb/MMBtu;	117.405(b)(1).
		An option	or 82 ppm_v NO_X at 3% O_2 dry basis.	117.405(b)(1).
Stationary, Reciprocating Internal Combustion Engines.	Gas-Fired Rich-Burn.		0.50 g/hp-hr	117.405(b)(2)(A).
	Gas-Fired Lean-Burn.	White Superior four-cycle units that have been placed into service, modified, reconstructed, or relocated before June 1, 2015.	12.0 g/hp-hr	117.405(b)(2)(B)(i)(I).
		White Superior four-cycle units that have been placed into service, modified, reconstructed, or relocated on or after June 1, 2015.	2.0 g/hp-hr	117.405(b)(2)(B)(i)(II).
		Clark two-cycle units that have been placed into service, modified, reconstructed, or relocated before June 1, 2015.	12.0 g/hp-hr	117.405(b)(2)(B)(ii)(I).
		Clark two-cycle units that have been placed into service, modified, reconstructed, or relocated on or after June 1, 2015.	2.0 g/hp-hr	117.405(b)(2)(B)(ii)(II).
		Fairbanks Morse MEP two-cycle units that have been placed into service, modified, reconstructed, or relocated before June 1, 2015.	4.0 g/hp-hr	117.405(b)(2)(B)(iii)(I).
		Fairbanks Morse MEP two-cycle units that have been placed into service, modified, reconstructed, or relocated on or after June 1, 2015.	2.0 g/hp-hr	117.405(b)(2)(B)(iii)(II).
		All others	2.0 g/hp-hr	117.405(b)(2)(B)(iv).
Turbines:	Stationary Gas	hp rating <10,000 hp	0.55 lb/MMBtu	117.405(b)(3)(A).
		hp rating ≥ 10,000 hp	0.15 lb/MMBtu	117.405(b)(3)(B).

III. Final Action

With one exception the EPA is approving all modified, repealed and new sections of 30 TAC Chapter 117 submitted by Texas on July 10, 2015 as part of the SIP revision.[1] The EPA is not taking action on the revision to 30 TAC 117.9810. The EPA intends to act on this revision in a later action. Table 2 contains a list of the sections of Chapter 117 with adopted subchapters, divisions, and key sections with approved modifications associated with the July 10, 2015 DFW 2008 eight-hour O_3 SIP submittal.

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[1] The EPA did not make a determination that the TCEQ rules included in the revision would meet the RACT requirements of the CAA § 182(b) for the 2008 O_3 NAAQS. Instead, the EPA intended for the rule changes to enhance the SIP by achieving NO_X reductions in the DFW NAA. The EPA will make a RACT determination in a separate action.

TABLE 2—DESCRIPTION AND SECTIONS OF 30 TAC, CHAPTER 117 APPROVED FOR MODIFICATION

Description	Section
Subchapter A: Definitions	§ 117.10.
Subchapter B, Division 4, DFW Eight-Hour O_3 NAA Major Sources	§§ 117.400, 117.403, 117.410, 117.423, 117.425, 117.430, 117.435, 117.440, 117.445, 117.450, 117.454, and 117.456.
Subchapter C, Division 4, DFW Eight-Hour O_3 NAA Utility Electric Generation Sources.	§§ 117.1303, 117.1310, 117.1325, 117.1335, 117.1340, 117.1345, 117.1350, and 117.1354.
Subchapter G, Division 1, General Monitoring and Testing Requirements.	§ 117.8000.
Subchapter H, Division 1, Compliance Schedules and Division 2, Compliance Flexibility.	§ 117.9030 and § 117.9130, § 117.9800.

Table 3 contains a list of the sections of Chapter 117 with adopted subchapters, divisions, and key sections with approved new requirements associated with the July 10, 2015 DFW 2008 eight-hour O_3 SIP submittal.

TABLE 3—DESCRIPTION AND SECTIONS OF 30 TAC, CHAPTER 117 APPROVED NEW REQUIREMENTS

Description	Section
Subchapter B, Division 4, DFW Eight-Hour O_3 NAA Major Sources	§§ 117.405, 117.452.

Per TCEQ's request, the following sections listed in Table 4 below will not become a part of the EPA-approved Texas SIP. These rules pertain mainly to the control of carbon monoxide and ammonia emissions, which are not O_3 precursors and, therefore, not necessary components of the DFW SIP. The EPA concurs that these rules can remain outside of the SIP.

TABLE 4—DESCRIPTION AND SECTIONS OF 30 TAC, CHAPTER 117 NOT IN TEXAS SIP

Description	Sections
Previously excluded and the TCEQ continues to ask that these remain outside the SIP.	§§ 117.210(c), 117.225, 117.410(d), 117.425, 117.1110(b), 117.1125, 117.1310(b), and 117.1325.
Adopted new and will not be submitted as a SIP revision	§ 117.405(d).

Table 5 contains subchapters, divisions, and key sections approved for repeal from the SIP by the TCEQ. The TCEQ adopts the repeal of existing Subchapters B and C in Division 2 as well as sections § 117.9010 and 117.9110 of Subchapter H in Division 1 because compliance dates for sources of NO_X subject to these sections have passed and are now obsolete. Furthermore, sources previously subject are now required to comply with more stringent rules in existing Subchapter B and C, Division 4 and in revised sections §§ 117.9030, 117.9130.

TABLE 5—DESCRIPTION AND SECTIONS OF 30 TAC, CHAPTER 117 APPROVED FOR REPEAL

Description	Section
Subchapter B, Division 2, DFW O_3 NAA Major Sources	§§ 117.200, 117.203, 117.205, 117.210, 117.215, 117.223, 117.225, 117.230, 117.235, 117.240, 117.245, 117.252, 117.254, 117.256.
Subchapter C, Division 2, DFW O_3 NAA Utility Electric Generation Sources.	§§ 117.1100, 117.1103, 117.1105, 117.1110, 117.1115, 117.1120, 117.1125, 117.1135, 117.1140, 117.1145, 117.1152, 117.1154, 117.1156.
Subchapter H, Division 1, Compliance Schedules	§§ 117.9010, 117.9110.

A complete summary along with all non-substantive changes pertaining to reformatting, restructuring, reorganizing, and administrative revisions are referenced in the Technical Support Document (TSD), "30 Texas Administrative Code (TAC) Chapter 117 Control of Air Pollution from Nitrogen Compounds," a copy of which is posted in the docket of this rule.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a

SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reasonably available control technology, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 30, 2016.

Ron Curry,

Regional Administrator, Region 6.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270(c), the table titled "EPA Approved Regulations in the Texas SIP" is amended by:

■ a. Removing the entries for Sections 117.200, 117.203, 117.205, 117.210, 117.215, 117.223, 117.225, 117.230, 117.235, 117.240, 117.245, 117.252, 117.254, 117.256, 117.1100, 117.1103, 117.1105, 117.1110, 117.1115, 117.1120, 117.1135, 117.1140, 117.1145, 117.1152, 117.1154, 117.1156, 117.1300, 117.1356, 117.9010, and 117.9110 under Chapter 117—Control of Air Pollution from Nitrogen Compounds; and

■ b. Adding the entries for Sections 117.405 and 117.452 in numerical order under Chapter 117—Control of Air Pollution from Nitrogen Compounds; and

■ c. Revising the entries for Sections 117.10, 117.400, 117.403, 117.410, 117.423, 117.430, 117.435, 117.440, 117.445, 117.450, 117.454, 117.456, 117.1303, 117.1310, 117.1335, 117.1340, 117.1345, 117.1350, 117.1354, 117.8000, 117.9030, 117.9130, and 117.9800 under Chapter 117—Control of Air Pollution from Nitrogen Compounds.

The amendments read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Chapter 117—Control of Air Pollution from Nitrogen Compounds **Subchapter A: Definitions**				
Section 117.10	Definitions	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Subchapter B: Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas				
* * * * * * *				
Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources				
Section 117.400	Applicability	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.403	Exemptions	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.405	Emission Specifications for Reasonably Available Control Technology (RACT).	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	117.405(d) Not in SIP.
Section 117.410	Emission Specifications for Eight-Hour Attainment Demonstration.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	117.410(d) Not in SIP.
Section 117.423	Source Cap	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.430	Operating Requirements	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.435	Initial Demonstration of Compliance	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.440	Continuous Demonstration of Compliance.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.445	Notification, Recordkeeping, and Reporting Requirements.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.450	Initial Control Plan Procedures	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.452	Final Control Plan Procedures for Reasonably Available Control Technology.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.454	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.456	Revision of Final Control Plan	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Subchapter C: Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas				
* * * * * * *				
Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources				
Section 117.1303	Exemptions	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.1310	Emission Specifications for Eight-Hour Attainment Demonstration.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	117.1310(b) Not in SIP.
Section 117.1335	Initial Demonstration of Compliance	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.1340	Continuous Demonstration of Compliance.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.1345	Notification, Recordkeeping, and Reporting Requirements.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.1350	Initial Control Plan Procedures	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
Section 117.1354	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
* * * * * * *				
Subchapter G: General Monitoring and Testing Requirements				
Division 1: Compliance Stack Testing and Report Requirements				
Section 117.8000	Stack Testing Requirements	6/3//2015	4/13/2016 [Insert **Federal Register** citation].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * * * * * *				
Subchapter H: Administrative Provisions				
Division 1: Compliance Schedules				
* * * * * * *				
Section 117.9030	Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
* * * * * * *				
Section 117.9130	Compliance Schedule For Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
* * * * * * *				
Division 2: Compliance Flexibility				
Section 117.9800	Use of Emission Credits For Compliance.	6/3/2015	4/13/2016 [Insert **Federal Register** citation].	
* * * * * * *				

[FR Doc. 2016–08158 Filed 4–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0382; FRL–9944–34]

Acequinocyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation increases an existing tolerance for residues of acequinocyl in or on "Hop, dried cones." Arysta LifeScience requested this tolerance increase under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 13, 2016. Objections and requests for hearings must be received on or before June 13, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0382, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0382 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 13, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0382, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 9, 2015 (80 FR 54257) (FRL–9933–26), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8364) by Arysta LifeScience North America Corp., 15401 Weston Pkwy., Suite 150, Cary, NC 27513. The petition requested to amend the tolerance in 40 CFR 180.599 for residues of the insecticide acequinocyl in or on hop, dried cones from 4.0 parts per million (ppm) to 15.0 ppm. That document referenced a summary of the petition prepared by Arysta LifeScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for acequinocyl including exposure resulting from the tolerance established by this action. EPA's assessment of exposures and risks associated with acequinocyl follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The absorption, metabolism, distribution, and excretion (ADME) of acequinocyl are well characterized. Acequinocyl exhibits marginal absorption into the plasma (13–16% for the 10 mg/kg low dose and 8–9% for the 500 mg/kg high dose) and relatively rapid and complete excretion (24 hours for the low dose and 72 hours for the high dose), primarily via the bile and feces (82.6%) in rats. Acequinocyl undergoes nearly complete metabolism to hydrolysis products and a glucuronide conjugate. There was no evidence for selective tissue accumulation or sequestration.

Across species, durations and routes of exposure (oral and dermal), the primary effects in the acequinocyl hazard database are indicative of toxicity to the liver (hepatocyte vacuolization, brown pigmented cells and perivascular inflammatory cells in liver) and hematopoietic system (hemorrhage, increased clotting factor times and increased platelet counts). In an acute neurotoxicity study, there were no effects up to the limit dose (2,000 mg/kg). In a guideline immunotoxicity study, there were also no effects up to the highest dose tested (45 mg/kg/day). In rats and rabbits, there was no evidence of increased quantitative or qualitative fetal susceptibility with clinical signs and gross necropsy findings seen in maternal animals at similar or lower doses than those producing resorptions. In the rat 2-generation reproductive toxicity study, offspring effects at the mid- and high-doses consisted of swollen body parts, protruding eyes, clinical signs, delays in pupil development, and increased mortality occurring mainly after weaning, however these effects were observed at the same doses as parental effects, and a clear NOAEL was established which is being used in endpoint selection. There were no effects on reproductive parameters. There was no concern for genotoxicity or mutagenicity. There was no evidence of carcinogenic potential in either the rat or mouse carcinogenicity studies, or in the genotoxicity and mutagenicity studies indicating that acequinocyl is "not likely" to be carcinogenic to humans.

Specific information on the studies received and the nature of the adverse effects caused by acequinocyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled *"May 27, 2015: Acequinocyl. Human Health Assessment Scoping Document in Support of Registration Review"* on page 15 in docket ID number EPA–HQ–OPP–2015–0203.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for acequinocyl used for human risk assessment is discussed in Unit III. B. of the final rule published in the **Federal Register** of May 2, 2012 (77 FR 25904) (FRL–9346–4).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to acequinocyl, EPA considered exposure under the petitioned-for tolerances as well as all existing acequinocyl tolerances in 40 CFR 180.599. EPA assessed dietary exposures from acequinocyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for acequinocyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). Tolerance-level residues, Dietary Exposure Evaluation Model (DEEM) ver. 7.76 default processing factors, and 100 percent crop treated (PCT) data were used in the chronic dietary assessment.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that acequinocyl does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for acequinocyl. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for acequinocyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of acequinocyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of acequinocyl for chronic exposure assessments are estimated to be 6.69 parts per billion (ppb) for surface water and 3.6×10^{-3} ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration of value 6.69 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Acequinocyl is currently registered for the following uses that could result in residential exposures: use on landscape ornamentals in and around residences, businesses, public property, schools, interiorscapes, and other non-production areas. EPA assessed residential exposure using the following assumptions: Adult short-term residential handler dermal and inhalation exposure is anticipated from adults applying acequinocyl to trees and ornamentals with handheld equipment. Adult and youth (6–11 years old) short-term post-application dermal exposure to acequinocyl is anticipated after application to trees and ornamentals. The dermal handler and post-application residential exposures were not included in the short-term aggregate assessment because different effects were seen in the route-specific dermal study compared to the effects seen in the oral studies used to select the oral and inhalation points of departure. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found acequinocyl to share a common mechanism of toxicity with any other substances, and acequinocyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that acequinocyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10x) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10x, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In rats and rabbits, there was no evidence of increased quantitative or qualitative fetal susceptibility with clinical signs and gross necropsy findings seen in maternal animals at similar or lower doses than those producing resorptions. In the rat 2-generation reproductive toxicity study, offspring effects at the mid- and high-doses consisted of swollen body parts, protruding eyes, clinical signs, delays in pupil development, and increased mortality occurring mainly after weaning, however these effects were

observed at the same doses as parental effects, and a clear NOAEL was established which is being used in endpoint selection. There were no effects on reproductive parameters.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for acequinocyl is complete.

ii. There is no indication that acequinocyl is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that acequinocyl results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies. In the rat two-generation reproductive toxicity study, offspring effects were observed at the same doses as parental effects, and a clear NOAEL was established which is being used in endpoint selection.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acequinocyl in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children. These assessments will not underestimate the exposure and risks posed by acequinocyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, acequinocyl is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acequinocyl from food and water will utilize 60% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of acequinocyl is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acequinocyl is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to acequinocyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 22,000 for adults 20–49 years old. Because EPA's level of concern for acequinocyl is a MOE of 100 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, acequinocyl is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for acequinocyl.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, acequinocyl is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to acequinocyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography methods with tandem mass-spectroscopy detection (HPLC/MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established an MRL for acequinocyl on hops.

V. Conclusion

Therefore, the existing tolerance for residues of acequinocyl, including its metabolites and degradates, in or on "Hop, dried cones" is increased from 4.0 ppm to 15 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect

Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 7, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.599, revise the entry for "Hop, dried cones" in the table in paragraph (a) to read as follows:

§ 180.599 Acequinocyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Hop, dried cones	15
* * *	* *

* * * * *

[FR Doc. 2016–08512 Filed 4–12–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE563

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea subarea of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the B season apportionment of the 2016 total allowable catch (TAC) of Pacific cod allocated to trawl catcher vessels in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 11, 2016, through 2400 hrs, A.l.t., June 10, 2016. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 28, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0118, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0118*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI under

§ 679.20(d)(1)(iii) on April 4, 2016 (81 FR 19931, April 6, 2016).

NMFS has determined that as of April 7, 2016, approximately 1,500 metric tons of Pacific cod remain in the B season apportionment of the 2016 TAC of Pacific cod allocated to trawl catcher vessels in the BSAI. However, NMFS closed directed fishing for Pacific cod in the Aleutian Island subarea of the BSAI under § 679.20(d)(1)(iii) on March 22, 2016 (81 FR 16096, March 25, 2016). Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the B season apportionment of the 2016 TAC of Pacific cod allocated to trawl catcher vessels in the BSAI, NMFS is terminating the directed fishing closure for Pacific cod by catcher vessels using trawl gear in the BSAI and is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea subarea of the BSAI. This action does not open directed fishing for Pacific cod by catcher vessels using trawl gear in the Aleutian Island subarea of the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher vessels using trawl gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea subarea of the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 7, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels using trawl gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 28, 2016.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 8, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–08487 Filed 4–8–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 71
Wednesday, April 13, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS–2015–0016]

RIN 0583–AD58

Eligibility of Honduras To Export Poultry Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to add Honduras to the list of countries eligible to export poultry products to the United States. The FSIS review of Honduras' laws, regulations, and inspection system demonstrated that its poultry slaughter inspection system is equivalent to the system FSIS has established under the Poultry Products Inspection Act (PPIA) and its implementing regulations.

At this time, because Honduras advised FSIS that it intends to export raw poultry products, such as whole carcasses, to the United States, FSIS has only assessed Honduras' poultry slaughter establishments. Thus, should this proposed rule become final, Honduras would only be eligible to export raw poultry products to the United States. Should Honduras express interest in exporting processed poultry product, such as cooked or canned product, to the United States, they would need to request an equivalence determination. Honduras would be required to submit additional records for FSIS to review and conduct an audit as appropriate.

Under this proposal, slaughtered poultry or parts thereof produced in certified Honduran establishments would be eligible for export to the United States. All such products would be subject to re-inspection at United States ports of entry by FSIS inspectors.

DATES: Submit comments on or before June 13, 2016.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- Mail, including CD–ROMs, etc.: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- Hand- or courier-delivered submittals: Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2015–0016. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS is proposing to amend its poultry products inspection regulations to add Honduras to the list of countries eligible to export poultry products to the United States (9 CFR 381.196(b)). Honduras is not currently listed as eligible to export poultry products to the United States. Honduras is currently eligible for the export of raw and processed meat products. If this proposed rule is finalized, establishments in Honduras will be eligible to export raw poultry to the United States. However, because of animal disease restrictions, Animal and Plant Health Inspection Service (APHIS) regulations restrict Honduras from shipping raw poultry product to the U.S. Newcastle disease (ND) is considered by APHIS to exist in all regions of the world except those listed in paragraph (a)(2) of 9 CFR 94.6. Because Honduras is not listed, the APHIS regulation restricts the importation of poultry carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Honduras. Honduras has requested APHIS' recognition of their ND status as ND free, and APHIS is conducting a review and evaluation. If APHIS determines that the request can be safely granted, it will state its intent and make its evaluation available for public comment through a document published in the **Federal Register**.

Statutory Basis for Proposed Action

Section 17 of the PPIA (21 U.S.C. 466) prohibits importation into the United States of slaughtered poultry, or parts or products thereof, of any kind unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient that renders them unhealthful, unwholesome, adulterated, or unfit for human food. Under the PPIA and the regulations that implement it, poultry products imported into the United States must be produced under standards for safety, wholesomeness, and labeling accuracy that are equivalent to those of the United States. Section 381.196 of Title 9 of the Code of Federal Regulations (CFR) sets out the procedures by which foreign countries may become eligible to export poultry and poultry products to the United States.

Section 381.196(a) requires a foreign country's poultry inspection system to include standards equivalent to those of the United States and to provide legal authority for the inspection system and its implementing regulations that is equivalent to that of the United States. Specifically, a country's legal authority and regulations must impose requirements equivalent to those of the United States with respect to: (1) Ante-mortem and post-mortem inspection by, or under the direct supervision of, a veterinarian; (2) official controls by the national government over establishment construction, facilities, and equipment;

(3) direct and continuous official supervision of slaughtering of poultry and processing of poultry products by inspectors to ensure that product is not adulterated or misbranded; (4) complete separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; (6) requirements for sanitation and for sanitary handling of product at establishments certified to export; (7) official controls over condemned product; (8) a Hazard Analysis and Critical Control Point (HACCP) system; and (9) any other requirements found in the PPIA and its implementing regulations (9 CFR 381.196(a)(2)(ii)).

In addition to a foreign country's legal authority and regulations, the program itself must be equivalent to the United States. Specifically, the program organized and administered by the national government must impose requirements equivalent to those of the United States with respect to: (1) Organizational structure and staffing, so as to ensure uniform enforcement of the requisite laws and regulations in all certified establishments; (2) ultimate control and supervision by the national government over the official activities of employees or licensees; (3) qualified inspectors; (4) enforcement and certification authority; (5) administrative and technical support; (6) inspection, sanitation, quality, species verification, and residue standards; and (7) any other inspection requirements (9 CFR 381.196(a)(2)(i)).

The foreign country's inspection system must ensure that establishments preparing poultry or poultry products for export to the United States, and their products, comply with requirements equivalent to those of the PPIA and the regulations promulgated by FSIS under the authority of that statute. The foreign country certifies the appropriate establishments as having met the required standards and advises FSIS of those establishments that are certified or removed from certification. Before FSIS will grant approval to the country to export poultry or poultry products to the United States, FSIS must first determine that reliance can be placed on the certification of establishments by the foreign country.

As indicated above, a foreign country's inspection system must be evaluated by FSIS before eligibility to export poultry products to the United States can be granted. This evaluation consists of two processes: A document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to effect its inspection program. To help the country in organizing its material, FSIS provides the country with a series of questions asking for detailed information about the country's inspection practices and procedures in six areas or equivalence components: (1) Government Oversight, (2) Statutory Authority and Food Safety Regulations, (3) Sanitation, (4) Hazard Analysis and Critical Control Point (HACCP) Systems, (5) Chemical Residue Testing Programs, and (6) Microbiological Testing Programs. FSIS evaluates the information submitted to verify that the critical points in the six equivalence components are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program. This comprehensive process is described more fully on the FSIS Web site at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/equivalence/equivalence-process-overview*.

The PPIA and implementing regulations require that foreign countries be listed in the CFR as eligible to export poultry products to the United States. FSIS must engage in rulemaking to list a country as eligible. Countries found eligible to export poultry or poultry products to the United States are listed in the poultry inspection regulations at 9 CFR 381.196(b). Once listed, it is the responsibility of the eligible country to certify that establishments meet the requirements to export poultry or poultry products to the United States and to ensure that products from these establishments are safe, wholesome, and not misbranded. To verify that products imported into the United States are safe, wholesome, and properly labeled and packaged, FSIS re-inspects and randomly samples those products before they enter the United States commerce.

Evaluation of the Honduran Poultry Inspection System

In 2003, the government of Honduras submitted an initial equivalence application and requested that FSIS conduct a review of Honduras' poultry slaughter inspection system to establish eligibility to export raw poultry products to the United States. FSIS conducted a document review of Honduras' poultry (slaughter) inspection system to determine whether that system was equivalent to that of the United States. Honduras only expressed interest in exporting raw poultry carcasses to the United States, and Honduras does not have a poultry processing establishment. Therefore, FSIS did not obtain documentation for an equivalence review of such a system. FSIS concluded on the basis of the review of Honduras' poultry slaughter system that Honduras' laws and regulations are equivalent to the Poultry Products Inspection Act (PPIA) and implementing regulations.

Accordingly, FSIS proceeded with an initial on-site audit of Honduras' poultry slaughter system in November 2005, to verify whether Honduras' National Plant and Animal Health Service (SENASA), which is Honduras' central competent authority for food inspection, effectively implemented a poultry inspection system equivalent to that of the United States. The audit resulted in the identification of systemic deficiencies within the following three equivalence components: Government Oversight, Sanitation, and HACCP. The audit found that SENASA did not have adequate government oversight and administrative controls over the inspection system. Also SENASA did not properly stage the necessary number of post-mortem inspectors at the evisceration line. In addition, the audit found during pre-operational sanitation verification inspection, SENASA did not implement procedures to ensure all shackles checked in a 15 foot section were not free of protein residue, fat particles from the previous day's production and dried paint droplets. Likewise, the audit found that SENASA failed to verify whether establishments met HACCP requirements within the system. SENASA took corrective actions to address all of the audit findings, either at the time of the finding, or after the distribution of the Final Audit Report on March 7, 2006. FSIS reviewed the proffered corrective actions and determined that they would be sufficient to prevent re-occurrence.

FSIS conducted a second on-site audit in June 2009, to verify whether all outstanding issues identified during the previous audit had been resolved. The 2009 audit verified that the implementation of Honduras' corrective actions to the previous audit findings were implemented as described and were working as intended.

However, the 2009 audit resulted in the identification of systemic deficiencies that had not been identified in the previous audit. The deficiencies related to the equivalence components of Sanitation, HACCP, and Microbiological Testing Programs. Specifically, the 2009 audit found that, with regard to Sanitation, SENASA did not implement procedures to verify adequate sanitation programs. With regard to HACCP, SENASA did not implement procedures to verify establishments met HACCP requirements. Finally, with regard to Microbiological Testing Programs, SENASA did not provide adequate controls over the implementation of laboratory quality systems associated with microbiological testing of product which is intended for export to the U.S.

After the 2009 on-site audit, Honduras developed a comprehensive corrective action plan to address the findings identified during the 2009 on-site audit. Its corrective actions included implementing new regulations, procedures, measures, and verification activities to ensure uniformity in conducting official inspection activities. FSIS reviewed Honduras' corrective action plan and concluded that Honduras had satisfactorily addressed all audit findings.

FSIS conducted a third on-site audit in September, 2014, to verify that Honduras had satisfactorily addressed all the findings of the November 2005 and June 2009 audits, and had met the FSIS criteria for all six equivalence components. The evaluation of all documentation provided by Honduras since the 2009 audit (corrective actions taken in response to the 2009 audit findings, regulatory updates, new performance standards, new microbiological laboratory procedures/analyses) supported the decision to perform another audit. The auditor verified that all corrective actions to the 2009 audit findings were implemented as described, and working as intended. There were no new audit findings observed by the auditor during the 2014 on-site audit. The resolution of previous audit findings, and the absence of new audit findings supports the conclusion that the Honduran poultry regulatory system cumulatively achieves a level of protection equivalent to that provided by the United States' poultry inspection system.

In summary, FSIS has completed the document review, on-site audits, and verification of corrective actions as part of the equivalence process, and all outstanding issues have been resolved. FSIS has tentatively concluded that, as implemented, Honduras' poultry inspection system (slaughter) is equivalent to the United States' poultry inspection system. The full report on Honduras' poultry inspection system (slaughter) can be found on the FSIS Web site at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports/foreign-audit-reports*.

At this time, Honduras intends to certify only one establishment as eligible to export product to the U.S. The establishment intends to export raw poultry product. Should this proposed rule become final, the government of Honduras must certify to FSIS those establishments that wish to export poultry products to the United States and that operate in accordance with requirements equivalent to that of the United States (9 CFR 381.196(a)). FSIS will verify that the establishments certified by Honduras' government are meeting the United States requirements through verification audits of Honduras' poultry inspection system.

Although a foreign country may be listed in FSIS regulations as eligible to export poultry to the United States, the exporting country's products must also comply with all other applicable requirements of the United States. These requirements include restrictions under 9 CFR part 94 of the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) regulations, which also regulate the exportation of poultry products from foreign countries to the United States. At this time, APHIS does not allow Honduras to export raw poultry to the US because Honduras is not recognized by APHIS as a region free of Newcastle disease (ND).

If this proposed rule is adopted and should APHIS allow Honduras to export raw poultry to the US in the future, all slaughtered poultry, or parts and products thereof, exported to the United States from Honduras will be subject to re-inspection at the U.S. ports of entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count.

In addition, FSIS will conduct other types of re-inspection activities, such as taking product samples for laboratory analysis for the detection of drug and chemical residues, pathogens, species, and product composition. Products that pass re-inspection will be stamped with the official United States mark of inspection and allowed to enter United States commerce. If they do not meet United States requirements, they will be refused entry and within 45 days must be exported to the country of origin, destroyed, or converted to animal food (subject to approval of FDA), depending on the violation. The import re-inspection activities can be found on the FSIS Web site at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/phis-import-component/phis-implementation-letter-to-importers/ct_index*.

Executive Order 12866 and 13563, and the Regulatory Flexibility Act

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a "non-significant" regulatory action under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has not been reviewed by the Office of Management and Budget under Executive Order (E.O.) 12866.

Expected Cost of the Proposed Rule

If this proposed rule is finalized, establishments in Honduras will be eligible to export raw poultry to the United States. However, because of animal disease restrictions, APHIS regulations currently prohibit Honduras from immediately shipping raw poultry product to the U.S. Honduras' establishments are currently eligible to export raw and processed beef and veal, raw and processed lamb and mutton, raw and processed goat as well as processed pork. According to data from the government of Honduras, if this proposed rule is finalized, Honduras intends to certify one establishment as eligible to export raw poultry to the United States.[1] The expected export volume for this establishment for the first three years is 10,211 Metric Tons (MT). This is expected to increase to 11,231 MT in year four and 12,355 MT in year five.[2]

The U.S. poultry industry is one of the most competitive agricultural industries in the world. U.S. establishments slaughtered 17.9 million MT of young chickens in 2014.[3] Approximately 3.0 million MT of young chickens slaughtered in the U.S. were exported in 2014. U.S. exports of young chicken comprised 31 percent of the market share among major traders in 2014.[4]

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[1] Honduras currently has only two establishments certified for meat exports to the United States. Therefore, it is unlikely we will see a significant increase in the number of establishments eligible to export poultry from Honduras.

[2] Source: Correspondence with the Government of Honduras.

[3] Source: FSIS's Public Health Information System (PHIS)

The importation of poultry products from Honduras is expected to have a minimal impact on the United States poultry market. Should the proposed rule become final, FSIS estimates Honduras' exports would comprise 0.6 percent (10,211 MT from Honduras compared to a U.S. slaughter volume of 17.9 million MT in 2014) of the United States market annually the first three years. FSIS estimates Honduras' exports would continue to comprise 0.6 percent of the United States market the fourth year and increase 0.7 percent the fifth year. FSIS projects that Honduras would not alter the United States poultry supply and would not have an impact on domestic poultry prices. Therefore, FSIS projects that establishments in the U.S. would not see the negative effects that could come from a decrease in price as a result of increased competition.

Companies based in Honduras that export to the United States or U.S. companies that export products from Honduras to the U.S. would incur standard costs such as export fees and freight and insurance costs. However, those companies would be willing to bear these costs because of the expected benefits associated with selling their products to the U.S.

Expected Benefits of the Proposed Rule

Should this proposed rule become final, we would see an increase in trade between Honduras and the United States. The volume of poultry exported from Honduras is likely to be small and is expected to have little to no effect on U.S. poultry supplies or prices. Therefore, consumers will not benefit from a decrease in price that would result from increased competition. However, Latin American preferences for dark meat compliment American preferences for white meat. Therefore, Honduras' establishments will benefit if they export surplus white meat to the United States. While the export of white meat from Honduras may be minimal compared to overall U.S. consumption, these exports may be significant enough in the long run to have an effect on domestic prices in Honduras.[5]

In addition, the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR), implemented in 2006, sought to level the playing field and increase trade between the United States and the six CAFTA–DR trading partners, including Honduras.[6] If this proposed rule is finalized, we would see a fulfillment of those objectives, benefiting U.S. and Honduras' firms and consumers, especially within the agricultural sector. Providing market access in the U.S. to Honduras' establishments ensures similar access will be given to U.S. firms. American firms have already benefited from CAFTA–DR, with agricultural exports (including wheat, live animals and red meat) to Honduras nearly doubling (97 percent) between 2006 and 2014 and is expected to rise even further in the future.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule will not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because, as stated above, the proposed rule would not have a significant effect on an U.S. establishments.

Paperwork Reduction Act

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export poultry and poultry products to the United States are required to provide information to FSIS certifying that their inspection system provides standards equivalent to those of the United States, and that the legal authority for the system and their implementing regulations are equivalent to those of the United States. FSIS provided Honduras with questionnaires asking for detailed information about the country's inspection practices and procedures to assist that country in organizing its materials. This information collection was approved under OMB number 0583–0153. The proposed rule contains no other paperwork requirements.

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication and officially notify the World Trade Organization's Committee on Sanitary and Phytosanitary Measures (WTO/SPS Committee) in Geneva, Switzerland, of this proposal on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

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[4] USDA Foreign Agricultural Service. (October 2014). Livestock and Poultry: World Markets and Trade. Washington, DC. *http://apps.fas.usda.gov/psdonline/circulars/livetock_poultry.pdf.*

[5] Haley, Mildred M. (May 2001). Changing Consumer Demand for Meat: The U.S. Example, 1970–2000. In A. Regmi, *Changing Structure of Global Food Consumption and Trade* (pp.41–48). (Economic Research Service Outlook No. WRS–01–1) Washington, DC.

[6] United States Department of Agriculture. *FACT SHEET on Dominican Republic-Central America-United States Free Trade Agreement* (Release No. 0237.08). Retrieved on March 18, 2015 from *http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2008/09/0237.xml&printable=true&contentidonly=true.*

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

List of Subjects in 9 CFR Part 381

Imported products.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

§ 381.196 [Amended]

■ 2. Section 381.196 is amended in paragraph (b) by adding "Honduras" in alphabetical order to the list of countries.

Done at Washington, DC, on: April 8, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–08478 Filed 4–12–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0571; Directorate Identifier 2014–NM–059–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain The Boeing Company Model 767–200, –300, and –400ER series airplanes. The NPRM proposed an inspection for plastic couplings, corrective actions if necessary, and installation of new spray shrouds. The NPRM was prompted by a report of the engine indication and crew alerting system (EICAS) display system malfunctioning during flight. This action revises the NPRM by adding, for certain airplanes, a general visual inspection of the spray shield and related investigative and corrective actions if necessary. We are proposing this supplemental NPRM (SNPRM) to prevent an uncontrolled water leak from a defective potable water system coupling, which could cause the main equipment center (MEC) line replaceable units (LRUs) to become wet, resulting in an electrical short and potential loss of several functions essential for safe flight. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by May 31, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0571.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0571; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2014–0571; Directorate Identifier 2014–NM–059–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767–200, –300, and –400ER series airplanes. The NPRM published in the **Federal Register** on August 14, 2014 (79 FR 47597) ("the NPRM"). The NPRM proposed to require an inspection for plastic couplings, corrective actions if necessary, and installation of new spray shrouds.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, Boeing has issued Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015. Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015, adds, for certain airplanes, a general visual inspection of the spray shield to determine if it has two slits and is installed correctly, and related investigative and corrective actions if necessary. We added a new paragraph (h) to require this inspection and, if necessary, related investigative and corrective actions as applicable. We redesignated subsequent paragraphs accordingly.

Comments

We gave the public the opportunity to comment on the NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing (APB) stated that the installation of winglets per supplemental type certificate ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/$FILE/ST01920SE.pdf*) does not affect the accomplishment of the manufacturer's service instructions. APB also expressed that it would provide supporting data to the FAA upon request.

We agree with the commenter that STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/$FILE/ST01920SE.pdf*) does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01920SE does not affect the ability to accomplish the actions required by this proposed AD. We have not changed this proposed AD in this regard.

Request To Include Latest Service Information

Boeing requested that we revise the NPRM to refer to Boeing Service Bulletin 767–38A0073, Revision 1, dated November 5, 2014, and to note that no more work is necessary on any airplanes on which the actions specified in Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013, have been done (the NPRM referred to Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013, as the appropriate source of service information). Boeing also stated that the revision includes some minor changes in the Work Instructions and corrects some part numbers in the Material Information section. Boeing noted that the revised service information includes the statement "no more work is necessary on any airplane(s) changed in accordance with the original issue of the service bulletin."

We agree to include the latest revision of the service information in this proposed AD. As stated previously, Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015, has been issued. This proposed AD would require that all actions be completed using Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015. We have also added a new paragraph (k) to this proposed AD to give credit for actions done before a certain date using Boeing Alert Service Bulletin 767- 38A0073, dated November 12, 2013, and Boeing Service Bulletin 767–38A0073, Revision 1, dated November 5, 2014. We have redesignated subsequent paragraphs accordingly.

Request To Revise the Inspection and Installation Paragraph (Paragraph (g) of the NPRM)

Boeing requested that we revise the "Inspection and Installation" paragraph (paragraph (g) of the proposed AD (in the NPRM)) to delete the following sentence:

> Do all applicable corrective actions within the compliance time identified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013, except as required by paragraph (h) of this AD."

Boeing claimed that the sentence is repetitive and that it adds no new information beyond what is captured in the first two sentences of paragraph (g) of the proposed AD (in the NPRM).

We do not agree to revise this proposed AD to delete the sentence as requested because the sentence is necessary to indicate the compliance time for the corrective actions. We have made no changes to this proposed AD in this regard.

Request To Revise Costs of Compliance Section by Adding Leak Test Costs

Boeing requested that we revise the Costs of Compliance section of the NPRM to account for the hours to perform the leak test on each airplane. Boeing explained that Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013, contains estimates of 3 work-hours for the leak test. Boeing reasoned that the hours to perform the leak test following any coupling replacement were not included in the cost estimate.

We agree to revise the Costs of Compliance section of this SNPRM to add the costs to perform a leak test, for the reason indicated by Boeing. We have included this cost in the "Related investigative actions" row of the on-condition costs.

Request To Revise Parts Installation Prohibition Paragraph

United Airlines (UA) requested that we revise the "Parts Installation Prohibition" paragraph (paragraph (i) of the proposed AD (in the NPRM)) to refer to part number (P/N) "CA620 series" or P/N "CA625 series," instead of simply "P/N CA620" or "P/N CA625." UA explained that calling out P/N CA620 or P/N CA625 comprises only a portion of the part number.

We agree to revise the "Parts Installation Prohibition" paragraph (paragraph (j) of this proposed AD, which was referred to as paragraph (i) of the proposed AD (in the NPRM)) to specify P/N "CA620 series" or P/N "CA625 series," for the reason explained by UA. A complete part number is formatted to provide information; *e.g.*, for "CA620XX–YYZZ," XX identifies the size, YY identifies the material, and ZZ is a color code; this proposed AD would prohibit P/N CA620 and P/N CA625 regardless of size, material, and color.

Request To Allow Use of Airplane Maintenance Manual (AMM)

UA explained that Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013, refers to Subject 38–10–00, Potable Water System, of Chapter 38, Water/Waste, of the Boeing 767 AMM as an accepted procedure to do a potable water system leak test on any replaced coupling and repair any leak. UA stated that the leak test on "any replaced coupling" in the potable water supply lines is only a portion of the referenced procedure, yet Subject 38–10–00, Potable Water System, of Chapter 38, Water/Waste, of the Boeing 767 AMM encompasses the water system as a whole. Steps (a) through (c) of paragraph G.9 in AMM 38–10–10 apply to the fill, drain, and overflow port, whereas step (d) applies to the water lines that supply lavatory and galley water. UA interpreted this requirement as referencing the steps in the Subject 38–10–00, Potable Water System, of Chapter 38, Water/Waste, of the Boeing 767 AMM that apply to any replaced coupling for compliance purposes.

We agree to clarify. Only the steps in the AMM for a leak test that apply to any replaced coupling must be done for compliance purposes. We have made no changes to this proposed AD in this regard.

Request To Include an Alternative Leak Test or Protection

UA requested that we revise paragraph (g) of the proposed AD (in the NPRM) to add an alternative leak test, or protection of the electronics during the leak test. UA stated that Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013, specifies a potable water supply line leak test in the electronic/equipment (EE) bay after repairs, which may produce leaks into the EE. UA advised providing protection from water spray in the event of a leak, since the shrouds may not have been installed at this point. When a sleeve is installed over the O-rings, sometimes the sleeve tends to "walk" or jam unevenly over the O-rings, causing an unexpected leak.

We disagree with the commenters request to add an alternative leak test, or to require protection of the electronics during the leak test. However, we agree that operators can take optional protective measures to cover or shield their equipment against water spray during the leak test. We have added note 1 to paragraph (g) of this proposed AD for clarification. We have determined that an alternative leak test is not necessary, and no requirement for electronics protection is needed. If present after the couplings have been swapped, the leak should be detected soon after the leak test is initiated, so the potential amount of water leaked would be minimal. If the sleeve was not properly installed, it should be obvious because the coupling could not be fully closed without the secondary retention strap secured. If damage to the O-ring occurred when the sleeve was installed, the leakage would be minimal. The electronics are contained inside panels and racks, and minimal water leakage should not be a problem. Only an undetected leak for extended duration, or major leaks spraying water all over, would be problematic since the racks/panels are not waterproof.

FAA's Determination

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of This SNPRM

This SNPRM would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0571.

The phrase "related investigative actions" is used in this proposed AD. "Related investigative actions" are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase "corrective actions" is used in this proposed AD. "Corrective actions" are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015. The service information describes procedures for a general visual inspection for plastic potable water couplings and applicable related investigative and corrective actions; installation of new spray shrouds; and a general visual inspection of the spray shield to determine if it has two slits, and is installed correctly, and applicable related investigative and corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this proposed AD affects 136 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Part 1—General visual inspection (Groups 1 through 3, 9, and 11, Configuration 1; Groups 4–8, 10, and 12–13) (136 airplanes).	Up to 3 work-hours × $85 per hour = $255.	$0	Up to $255	Up to $34,680.
Part 2—General visual inspection (Group 9, Configuration 1, and Group 10) (32 airplanes).	2 work-hours × $85 per hour = $170.	0	$170	$5,440.
Part 3—Install spray shrouds	3 work-hours × $85 per hour = $255.	330	$585	$79,560.
Part 4—General visual inspection (Groups 1 through 3, 9, and 11, Configuration 2) (30 airplanes).	2 work-hours × $85 per hour = $170.	0	$170	$5,100.

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Related investigative actions	3 work-hours × $85 per hour = $255	$0	$255.
Corrective actions	Up to 1 work-hour × $85 per hour = $85	53	Up to $138.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs" describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2014–0571; Directorate Identifier 2014–NM–059–AD.

(a) Comments Due Date

We must receive comments by May 31, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/Waste.

(e) Unsafe Condition

This AD was prompted by a report of the engine indication and crew alerting system (EICAS) display system malfunctioning during flight. We are issuing this AD to prevent an uncontrolled water leak from a defective potable water system coupling, which could cause the main equipment center (MEC) line replaceable units (LRUs) to become wet, resulting in an electrical short and potential loss of several functions essential for safe flight.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection of Couplings and Installation of Spray Shrouds

For Groups 1 through 3, Configuration 1 airplanes; Groups 4 through 8 airplanes; Group 9, Configuration 1 airplanes; Group 10 airplanes; Group 11, Configuration 1 airplanes; and Groups 12 and 13 airplanes; as identified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015: At the applicable times identified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015, except as required by paragraph (i) of this AD, do a general visual inspection for plastic potable water couplings, do all applicable related investigative and corrective actions, and install new spray shrouds (including a new hose assembly, as applicable), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015. Do all applicable related investigative and corrective actions within the applicable compliance time identified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015, except as required by paragraph (i) of this AD.

Note 1 to paragraph (g) of this AD: Operators can take optional protective measures to cover or shield their equipment against water spray when performing the Potable Water System Leakage Test, as specified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015.

(h) Inspection of Spray Shield and Corrective Actions

For Groups 1 through 3, 9, and 11, Configuration 2 airplanes; as identified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015: Within 72 months after the effective date of this AD, do a general visual inspection of the spray shield to determine if it has two slits and is installed correctly, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015. Do all applicable related investigative and corrective actions before further flight.

(i) Exception to the Service Information

Where paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install any plastic potable water coupling having part number (P/N) CA620 series or P/N CA625 series on any airplane.

(k) Credit for Previous Actions

For Groups 4 through 8, 10, 12, and 13 airplanes, as identified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015: This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013; or Boeing Service Bulletin 767–38A0073, Revision 1, dated November 5, 2014; which are not incorporated by reference in this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair,

modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(4)(i) and (l)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(m) Related Information

(1) For more information about this AD, contact Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov.*

(2) For service information identified in this AD, Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 30, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08365 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5467; Directorate Identifier 2015–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Defense and Space S.A. Model CN–235, CN–235–200, and CN–235–300 airplanes. This proposed AD was prompted by reports of main landing gear (MLG) access doors detaching from the airplane as a result of excessive vibration and metal fatigue in the attach fittings. This proposed AD would require modification of the MLG access door by replacing seals in the MLG fairing and, for certain airplanes, adding an additional bolt. We are proposing this AD to prevent a fracture in the MLG access door associated with excessive vibration and metal fatigue in the attach fittings. This condition could lead to MLG access door detachment and consequent impact of flight controls, resulting in reduced control of an airplane.

DATES: We must receive comments on this proposed AD by May 31, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5467; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5467; Directorate Identifier 2015–NM–186–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued Airworthiness Directive 2015–0225, dated November 18, 2015 (referred to after this as the Mandatory Continuing Airworthiness

Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Defense and Space S.A. Model CN–235, CN–235–200, and CN–235–300 airplanes. The MCAI states:

> Occurrences of Main Landing Gear (MLG) Access Door detachment were reported. Subsequent investigation determined that the detachments of the MLG Door occurred during maneuvers performed at high speed and with high sideslip angle on airplanes not modified in accordance with the instructions EADS–CASA [European Aeronautic Defence and Space Company–Construcciones Aeronauticas, S.A]. Service Bulletins (SBs) SB–235–52–0061 and SB–235–52–0068. Based on the investigation results, it was determined that the fracture mechanism was associated with excessive deformation that could produce scooping in the forward edge combined with an excessive vibration of the MLG Access Door.
>
> This condition, if not corrected, could lead to MLG Access Door detachment and consequent impact of flight controls, resulting in reduced control of an airplane and possible injury of persons on the ground.
>
> To address this potential unsafe condition, EADS–CASA issued SB–235–52–0061 and SB–235–52–0068 to provide modification instructions.
>
> For the reasons described above, this [EASA] AD requires modification of MLG Access Doors and prohibits installation of a MLG Access Door sealing part number (P/N) CAN36032R. This AD also prohibits installation of not modified MLG Access Doors.

Required actions include modification of the MLG access door by replacing seals in the MLG fairing and, for certain airplanes, adding an additional bolt. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5467.

Related Service Information Under 1 CFR Part 51

EADS CASA has issued the following service information:

- EADS CASA Service Bulletin SB–235–52–0061, Revision 1, dated October 24, 2014. The service information describes procedures for modifying the MLG access door by installing an additional bolt.
- EADS CASA Service Bulletin SB–235–52–0068, Revision 2, dated January 9, 2015. The service information describes procedures for modifying the MLG access door by installing an improved fairing seal.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 30 airplanes of U.S. registry.

We also estimate that it will take up to 60 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost up to $12,684 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $533,520, or up to $17,784 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.): Docket No. FAA–2016–5467; Directorate Identifier 2015–NM–186–AD.

(a) Comments Due Date

We must receive comments by May 31, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN–235, CN 235–200, and CN 235–300 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports of main landing gear (MLG) access doors detaching from the airplane as a result of excessive vibration and metal fatigue in the attach fittings. This condition could lead to MLG access door detachment and consequent impact of flight controls, resulting in reduced control of an airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Modifications

(1) For all airplanes: Within 12 months after the effective date of this AD, modify each MLG access door by installing an improved fairing seal, in accordance with the Accomplishment Instructions of EADS CASA Service Bulletin SB–235–52–0068, Revision 2, dated January 9, 2015.

(2) For all Model CN–235–200 airplanes: Concurrently with the action required in paragraph (g)(1) of this AD, modify each affected MLG access door by installing an additional bolt, in accordance with the Accomplishment Instructions of EADS CASA Service Bulletin SB–235–52–0061, Revision 1, dated October 24, 2014.

(h) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD, using EADS CASA Service Bulletin SB–235–52–0068, Revision 1, dated October 24, 2014; or SB–235–52–0068, dated July 15, 2002; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (g)(2) of this AD, if those actions were performed before the effective date of this AD using EADS CASA Service Bulletin SB–235–52–0061, dated October 31, 1996, which is not incorporated by reference in this AD.

(i) Parts Installation Prohibition and Limitation

(1) For airplanes modified as specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable, before the effective date of this AD: As of the effective date of this AD, no person may install a seal having part number CAN36032R on any MLG access door.

(2) For airplanes not modified as specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable, before the effective date of this AD: After accomplishing the actions required by paragraphs (g)(1) and (g)(2) of this AD, as applicable, no person may install a seal having part number CAN36032R on any MLG access door.

(3) As of the effective date of this AD, installation of a MLG access door on an airplane is allowed, provided the MLG access door is modified as required by paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus Defense and Space S.A.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0225, dated November 18, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5467.

(2) For service information identified in this AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 31, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08350 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5392; Directorate Identifier 2016–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain International Aero Engines AG (IAE) V2500–A1 turbofan engines. This proposed AD was prompted by a report of an uncontainment caused by a high-pressure turbine (HPT) seal release. This proposed AD would require removing from service the HPT No. 4 bearing front seal seat, part numbers (P/Ns) 2A0066, 2A1998, and 2A3432, and the HPT No. 4 bearing rear seal seat, P/Ns 2A0067, 2A1999, and 2A3433, and replacement with parts eligible for installation. This proposed AD would also require inspecting the HPT rotor and stator assembly, and, if necessary, their replacement with parts that are eligible for installation. We are proposing this AD to prevent failure of the HPT stage 2 seals, uncontained HPT seal release, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by June 13, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* Internet: *http://fleetcare.pw.utc.com*. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5392; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5392; Directorate Identifier 2016–NE–10–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

We received a report of an uncontained part release which breached an HPT case. This event resulted in an engine fire and exhaust gas temperature over-limit readings. Subsequent investigation has shown that the preliminary cause was blockage at the No. 4 bearing seal seat anti-weep grooves. Blockage of these grooves could allow oil to escape the No. 4 compartment and migrate to the HPT. Oil migration to the HPT could result in oil ignition and could eventually result in a stage 2 air-seal fracture. This condition, if not corrected, could result in failure of the HPT stage 2 seals, uncontained HPT seal release, damage to the engine, and damage to the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed IAE Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0670, dated March 14, 2016. The NMSB identifies affected engines and provides guidance for replacing the No. 4 bearing front and rear seal seats and for inspecting the HPT rotor and stator assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removing from service the HPT No. 4 bearing front seal seat, P/Ns 2A0066, 2A1998, and 2A3432, and the HPT No. 4 bearing rear seal seat, P/Ns 2A0067, 2A1999, and 2A3433, and replacement with parts eligible for installation. This proposed AD would also require inspecting the HPT rotor and stator assembly, and, if necessary, their replacement with parts that are eligible for installation.

Costs of Compliance

We estimate that this proposed AD affects 0 engines installed on airplanes of U.S. registry. We estimate that it would take about 10 hours to perform the seal seat replacement. The average labor rate is $85 per hour. We also estimate the cost of No. 4 bearing front and rear seal seats to be $13,562. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $0.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

International Aero Engines AG: Docket No. FAA–2016–5392; Directorate Identifier 2016–NE–10–AD.

(a) Comments Due Date

We must receive comments by June 13, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines AG (IAE) V2500–A1 turbofan engines with serial numbers listed in Effectivity Data of IAE Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0670, dated March 14, 2016.

(d) Unsafe Condition

This AD was prompted by a report of an uncontainment caused by a high-pressure turbine (HPT) seal release. We are issuing this AD to prevent failure of the HPT stage 2 seals, uncontained HPT seal release, damage to the engine, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Prior to accumulating 500 cycles in service after the effective date of this AD,

(i) Remove from service No. 4 bearing front seal seat part numbers (P/Ns) 2A0066, 2A1998, 2A3432; and No. 4 bearing rear seal seat, P/Ns 2A0067, 2A1999, 2A3433, and replace with parts eligible for installation.

(ii) Inspect the HPT rotor and stator assembly. Use the Accomplishment Instruction, Part C, Section 1.B of IAE NMSB V2500–ENG–72–0670, dated March 14, 2016 to perform the inspection.

(2) For any parts that fail the inspection required by paragraph (e)(1)(ii) of this AD, before further flight, remove and replace with parts eligible for installation.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

(2) IAE NMSB V2500–ENG–72–0670, dated March 14, 2016, can be obtained from IAE, using the contact information in paragraph (g)(3) of this proposed AD.

(3) For service information identified in this proposed AD, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* Internet: *http://fleetcare.pw.utc.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on April 8, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–08462 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5466; Directorate Identifier 2015–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes. This proposed AD was prompted by investigation results that determined that a certain thickness of the fuel tank panels is insufficient to meet the certification requirements. This proposed AD would require inspecting the thickness of the fuel tank panels, and repair if necessary. We are proposing this AD to detect and correct improper thickness of the fuel tank panels. Improper thickness increases the risk of damaging and puncturing a fuel tank wall panel as a result of a high energy lightning strike, which could lead to loss of electrical power and/or other essential functions, possibly resulting in reduced control of the airplane or ignition of a fuel tank.

DATES: We must receive comments on this proposed AD by May 31, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5466; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5466; Directorate Identifier 2015–NM–183–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0216, dated October 28, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Dassault Aviation Model FALCON 7X airplanes. The MCAI states:

> Several rear fuselage tanks of the Falcon 7X were assembled on the production line with a lateral panel, which had been excessively chemically-milled in some areas. Investigation results determined that the remaining thickness is insufficient to meet the certification requirements. Dassault Aviation identified the individual aeroplanes that are potentially affected by this production deficiency. Due to this reduced thickness, the risk of damaging and puncturing a fuel tank wall panel as a result of a high energy lightning strike is increased.
>
> This condition, if not detected and corrected, could lead to loss of electrical power and/or other essential functions, possibly resulting in reduced control of the aeroplane or ignition of a fuel tank.
>
> To address this potential unsafe condition, Dassault Aviation published Service Bulletin (SB) 7X–245 to provide inspection and repair instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of

the fuel tank wall panels and, depending on findings, accomplishment of a repair.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5466.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Service Bulletin 7X–245, dated June 8, 2015. The service information describes procedures for measuring fuel tank panel thickness, and repair if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 6 airplanes of U.S. registry.

We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $4,080, or $680 per product.

In addition, we estimate that any necessary follow-on actions would take about 20 work-hours and require parts costing $2,244, for a cost of $3,944 per product. We have no way of determining the number of aircraft that might need this action.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Dassault Aviation: Docket No. FAA–2016–5466; Directorate Identifier 2015–NM–183–AD.

(a) Comments Due Date

We must receive comments by May 31, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, serial numbers (S/Ns) 17 through 21 inclusive, S/Ns 86 through 90 inclusive, S/Ns 115 through 119 inclusive, S/Ns 129 through 138 inclusive, and S/N 155.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by investigation results that determined that a certain thickness of the fuel tank panels is insufficient to meet the certification requirements. We are issuing this AD to detect and correct improper thickness of the fuel tank panels. Improper thickness increases the risk of damaging and puncturing a fuel tank wall panel as a result of a high energy lightning strike, which could lead to loss of electrical power and/or other essential functions, possibly resulting in reduced control of the airplane or ignition of a fuel tank.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Repair

Within 99 months or 4,100 flight cycles, whichever occurs first since the date of first delivery of the airplane, inspect for improper thickness of the fuel tank panels, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X–245, dated June 8, 2015. If improper thickness is found during this inspection, before further flight, repair the fuel tank panels, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X–245, dated June 8, 2015.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN:

Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0216, dated October 28, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5466.

(2) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 30, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08351 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7487; Airspace Docket No. 15–ACE–7]

Proposed Amendment of Class D and E Airspace and Revocation of Class E Airspace; Sioux City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and E airspace at Sioux Gateway/Col. Bud Day Field, Sioux City, IA, due to the decommissioning of the Gateway non-directional radio beacon (NDB) and cancellation of the NDB approaches at the airport. The Class E airspace area designated as an extension would be removed as it is no longer needed. Advances in Global Positioning System (GPS) capabilities have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the geographic coordinates for Martin Field, NE, to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before May 31, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2015–7487; Airspace Docket No. 15–ACE–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D and E airspace at Sioux Gateway/Col. Bud Day Field, Sioux City, IA.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2015–7487/Airspace Docket No. 15–ACE–7." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface area airspace and Class E airspace extending upward from 700 feet above the surface at Sioux Gateway/Col. Bud Day Field, Sioux City, IA. The Class E airspace area designated as an extension also would be removed as the extension is no longer needed. Decommissioning of the Gateway NDB and cancellation of the NDB approaches due to advances in GPS capabilities have made airspace reconfiguration is necessary at this airport. The geographic coordinates noted in Class D and E surface area airspace for South Sioux City, Martin Field, NE, also would be adjusted.

Class D and E airspace designations are published in paragraphs 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE IA D Sioux City, IA [Amended]

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(lat. 42°24′09″ N., long. 96°23′04″ W.)
South Sioux City, Martin Field, NE
(lat. 42°27′19″ N., long. 96°28′20″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of Sioux Gateway/Col. Bud Day Field, excluding that airspace within a 1-mile radius of South Sioux City, Martin Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Sioux City, IA [Amended]

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″ N., long. 96°23′04″ W.)
South Sioux City, Martin Field, NE
(Lat. 42°27′19″ N., long. 96°28′20″ W.)

Within a 4.3-mile radius of Sioux Gateway/Col. Bud Day Field, excluding that airspace within a 1-mile radius of the South Sioux City, Martin Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE IA E4 Sioux City, IA [Removed]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE IA E5 Sioux City, IA [Amended]

Sioux City, Sioux Gateway Airport/Col. Bud Day Field, IA
(Lat. 42°24′09″ N., long. 96°23′04″ W.)
Sioux City VORTAC
(Lat. 42°20′40″ N., long. 96°19′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Sioux Gateway Airport/Col. Bud Day Field, and within 3.9 miles each side of the 319 ° radial of the Sioux City VORTAC extending from the 6.8-mile radius to 14.4 miles northwest of the VORTAC, and within 4 miles each side of the 001 ° bearing from Sioux Gateway Airport/Col. Bud Day Field extending from the 6.8-mile radius of the airport to 12 miles northwest of the airport.

Issued in Fort Worth, Texas, on April 4, 2016.

Robert W. Beck,

Manager, Operations Support Group, Central Service Center.

[FR Doc. 2016–08394 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–4429; Airspace Docket No. 16–ASW–8]

Proposed Amendment of Class E Airspace for the Following Louisiana Towns; De Quincy, LA; Minden, LA; Slidell, LA; and Revocation of Class E Airspace; Homer, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at De Quincy Industrial Airpark, De Quincy, LA; Minden-Webster Airport, Minden, LA; and Slidell, Airport, Slidell, LA. Decommissioning of non-directional radio beacon (NDB), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. This action also proposes to remove Class E airspace extending upward from 700 feet above the surface at Homer Municipal Airport, Homer, LA, as controlled airspace is no longer needed. Additionally, the geographic coordinates at De Quincy Industrial Airpark, Minden-Webster Airport, and Slidell Airport would be adjusted to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before May 31, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2016–4429; Airspace Docket No. 16–ASW–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at De Quincy Industrial Airpark, De Quincy, LA; Homer Municipal Airport, Homer, LA; Minden-Webster Airport, Minden, LA; and Slidell, Airport, Slidell, LA.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–4429/Airspace Docket No. 16–ASW–8." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface within a 7.5-mile radius of De Quincy Industrial Airpark, De Quincy, LA; within a 6.5-mile radius of Minden-Webster Airport, Minden, LA; and within a 6.5-mile radius of

Slidell Airport, Slidell, LA, with segments extending from the 6.5-mile radius to 9.2 miles north, and 9 miles south of the airport. Airspace reconfiguration is necessary due to the decommissioning of NDBs, cancellation of NDB approaches, and implementation of RNAV procedures at the above airports. The Class E airspace area extending upward from 700 feet above the surface within a 6.8-mile radius of Homer Municipal Airport, Homer, LA, would be removed as controlled airspace is no longer needed. Controlled airspace is necessary for the safety and management of the standard instrument approach procedures for IFR operations at the airports.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW LA E5 De Quincy, LA [Amended]

De Quincy Industrial Airpark, LA
(Lat. 30°26′28″ N., long. 93°28′25″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of De Quincy Industrial Airpark.

* * * * *

ASW LA E5 Homer, LA [Removed]

* * * * *

ASW LA E5 Minden, LA [Amended]

Minden-Webster Airport, LA
(Lat. 32°38′46″ N., long. 93°17′53″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Minden-Webster Airport.

* * * * *

ASW LA E5 Slidell, LA [Amended]

Slidell Airport, LA
(Lat. 30°20′47″ N., long. 89°49′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Slidell Airport, and within 4.0 miles each side of the 360° bearing from the airport extending from the 6.5-mile radius to 9.2 miles north of the airport, and within 4.0 miles each side of the 180° bearing from the airport extending from the 6.5-mile radius to 9.0 miles south of the airport.

Issued in Fort Worth, Texas, on April 4, 2016.

Robert W. Beck,

Manager, Operations Support Group, Central Service Center.

[FR Doc. 2016–08393 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1025

[CPSC Docket No. 2016–0006]

Rules of Practice for Adjudicative Proceedings

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Consumer Product Safety Commission ("Commission," "CPSC," or "we") is issuing this notice of proposed rulemaking ("NPR") to update the Commission's Rules of Practice for Adjudicative Proceedings, ("Rules of Practice" or "Rules"). We are proposing to modernize the Rules of Practice to reflect changes in civil and administrative litigation since adoption of the Rules in 1980. Specifically, we propose changes to the Rules pertaining to discovery, electronic filing, the use of electronically stored information ("ESI"), and updates to the Federal Rules of Civil Procedure ("Federal Rules"), upon which our Rules are based. We also propose to update requirements for pleadings, motions, and motions for summary decisions, clarifications on the computation of time, and clarification on when amendments or supplemental pleadings require Commission approval. Additionally, we propose allowing a Presiding Officer to exercise discretion to avoid unnecessary delay or wasteful discovery and to consolidate cases in their entirety, or partially, for any purpose that serves the ends of justice. We also propose to set deadlines for the issuance of an Initial or Recommended Decision. Finally, we propose to remove outdated references to the Equal Access to Justice Act. We believe the proposed Rules will increase the efficiency of discovery, minimize the potential for delay in adjudicative proceedings, and ensure that, to the extent possible, Commission adjudicative proceedings address and resolve crucial issues of consumer product safety in a fair and impartial manner. This NPR seeks comments on the proposed changes to the Rules.

DATES: Submit comments by June 13, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CPSC 2016–0006, electronically or in writing, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://*

www.regulations.gov. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments through the Federal eRulemaking Portal.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2016–0006, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Mary B. Murphy, Assistant General Counsel, U.S. Consumer Product Safety Commission, 4330 E. West Highway, Bethesda, MD 20814–4408; email: *mmurphy@cpsc.gov* telephone: (301) 504–7809.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend the agency's Rules of Practice for Adjudicative Proceedings. 16 CFR part 1025. The proposed rule reflects changes in civil and administrative litigation since adoption of the Rules in 1980.

Table of Contents

I. Background and Statutory Authority
II. Reasons for Revision of the Rules
III. Section-by-Section Analysis of the Proposed Revisions of the Rules of Practice
IV. Environmental Issues
V. Regulatory Flexibility
VI. Paperwork Reduction
VII. Preemption
VIII. Effective Date
IX. Requests for Comments

I. Background and Statutory Authority

a. Commission Adjudicative Proceedings

The Consumer Product Safety Act (15 U.S.C. 2064(c), (d), (f); 2076(b)) ("CPSA"), the Federal Hazardous Substances Act (*id.* 1274) ("FHSA"), the Flammable Fabrics Act (*id.* 1192, 1194, 1197(b)) ("FFA"), the Poison Prevention Packaging Act (*id.* 1473(c)) ("PPPA"), and the Virginia Graeme Baker Pool and Spa Act, (*id.* 8003) ("VGBA") authorize the Commission to initiate and conduct adjudicative proceedings related to the safety of certain consumer products, and, based on the Commission's findings, issue orders or take other action to protect the public. Under the requirements of the cited statutes, such adjudicative proceedings must be determined on an administrative record after opportunity for a public hearing.

b. Procedural Rules Requirement

Under the Administrative Procedure Act ("APA") (5 U.S.C. 500 *et seq.*), adjudications mandated by statute to be determined on the record after opportunity for a public hearing are subject to certain procedural requirements. These requirements include notice of the time, place and nature of the hearing, information about the legal authority under which the hearing is to be held, and information on the matters of fact and law asserted. (*Id.* 554(a)–(b)). The Commission adopted the Rules of Practice to govern adjudicative hearings under its enabling statutes and other administrative proceedings, as determined by the Commission.

c. History of the Rules of Practice

The Rules of Practice were first proposed by the Commission in 1974, for use on an interim basis. (39 FR 26848, July 23, 1974). In 1977, the Commission revised the Rules of Practice, publishing them for use on an interim basis and for public comment. (42 FR 31431 (interim rules); 42 FR 36818 (issuing correction). In 1980, after considering public comments and the Commission's experiences with the existing interim rules, the Commission adopted the Rules of Practice. (45 FR 29215, May 1, 1980). The Commission last amended the Rules of Practice in 1982 to make them applicable to hearings required by section 15 of the FHSA (47 FR 46845, Oct. 21, 1982).

On May 12, 2015, the Commission voted to direct staff to present for Commission consideration a revision of the Rules of Practice, with the goal of streamlining future adjudications and aligning the Rules of Practice with the Federal Rules of Civil Procedure.

II. Reasons for Proposed Revision of the Rules

a. Alignment With the Federal Rules of Civil Procedure

Since the 1980s, when the Commission last amended the Rules of Practice, the Commission's model, the Federal Rules, have been substantially revised. Among other things, these changes altered the pretrial process, providing new discovery standards intended to increase the speed and efficiency of litigation.

Prominent among these changes were detailed rules requiring parties to cooperate in pre-discovery and pre-trial planning. For example, the Federal Rules now require an affirmative pre-discovery disclosure by each party of information, documents, ESI, and other evidence that the party may use to support its claims or defenses. The Federal Rules also require participation by parties in pre-discovery and pretrial conferences, with the aim of focusing the issues to be adjudicated. Along with these changes have come new limits on formal discovery tools, including interrogatories, document requests, and depositions. In addition to proposing that our Rules of Practice follow the scope of discovery stated in Rule 26 of the Federal Rules, we are proposing to follow, with certain changes, the Federal Rules' procedures on mandatory disclosures of information and the Federal Rules' limits on formal discovery tools, by adhering to the Federal Rules on interrogatories, requests for documents and things, depositions, and requests for admission. We believe that changing our Rules of Practice to require affirmative pre-discovery disclosure, mandate participation in pre-discovery and prehearing conferences, and impose limits on wasteful discovery practices will streamline the adjudicative process, and thereby, advance our goal of establishing expeditious and fair proceedings.

Recent changes in the Federal Rules have also placed substantial focus on the discretionary powers of Presiding Officers. Under these rules, the judge or magistrate may limit or expand discovery, and on motion, or on his or her own initiative, may tailor the pace of the adjudication and the scope and length of discovery based on the issues in each case. We are proposing to follow, with appropriate changes, the Federal Rules' emphasis on empowering the Presiding Officer to use his or her discretion to control the pace and progress of discovery. In our proposed Rules of Practice, the Presiding Officer would be an active participant in the discovery process, with powers to actively manage cases to avoid delays and forestall inefficient or wasteful discovery.

The Federal Rules provide substantial guidance on the discoverability and use of ESI because, increasingly, information is stored in digital form. Our proposed Rules of Practice would largely follow the Federal Rules' guidance on the discoverability of electronic evidence.

b. Increasing the Efficiency of Adjudicative Proceedings

In addition to aligning our Rules of Practice with the Federal Rules, the changes we propose would increase the efficiency and decrease the burden of preparing for and litigating administrative hearings. For example, we propose to update our Rules of Practice on consolidating cases to allow the Presiding Officer to consolidate cases, fully or partially, for discovery and/or for hearing, on a party's motion, or at the Presiding Officer's discretion.

Additional proposed changes would adapt the Rules of Practice to the general needs of administrative litigation, based on the experiences of Commission staff in adjudicative proceedings. In each case, we propose to emphasize the discretion of the Presiding Officer to facilitate quick, fair, and efficient discovery and trial of adjudicative matters. Although we would vest significant discretion in the Presiding Officer, we would, nevertheless, seek to impose timelines on the adjudicative proceeding and deadlines on the Presiding Officer, requiring initial decisions to be made within set time frames.

c. Updating CPSC's Rules of Practice To Conform to Current Administrative Practice

Another important reason for updating our Rules of Practice is to clarify the process for amending complaints authorized by the Commission. We propose to update our Rules of Practice to provide clearer guidance on when amendments require Commission consideration.

We also propose to revise our Rules of Practice to permit electronic filing and service of pleadings and documents and to discourage filing of paper documents. Likewise, we propose to revise the existing requirement that the Commission's Secretariat maintain an official paper file, a practice that is cumbersome and fails to reflect significant technological advancements. We also propose to revise our Rules of Practice regarding service of process to accommodate electronic service of most documents and pleadings and to recognize the use of common carriers in the delivery of paper documents. Likewise, we propose to clarify our Rules of Practice regarding motions for summary decisions, amending that section to follow more closely the Federal Rules.

III. Section-by-Section Analysis of the Proposed Revisions to the Rules of Practice

Subpart A—Scope of Rules, Nature of Adjudicative Proceedings, Definitions

Proposed Changes to Rule § 1025.1 (Scope of Rules)

The proposal would revise § 1025.1, Scope of rules, to clarify that, in addition to adjudicative proceedings related to the CPSA, the FHSA, and the FFA, the Commission also is empowered to conduct adjudications under the PPPA and the VGBA. Specifically, our proposed revision would clarify that the Commission may conduct adjudicative proceedings under Section 4(c) of the PPPA and Section 1404 of the VGBA. We propose to add appropriate references to these statutes and make additional minor changes for clarity in our Rules of Practice.

In addition, the proposal would revise § 1025.1 to remove the existing statement that the Rules of Practice govern adjudicative proceedings for the assessment of civil penalties under section 20(a) of the CPSA. Pursuant to a statutory change, such actions are now litigated in U.S. District Court, rather than before the Commission. Therefore, the current language in our Rules of Practice is unnecessary and inaccurate, as is a statement on the limited scope of discovery in civil penalty cases, which we also propose to remove.

We also propose new language in § 1025.1 to establish the Commission's health and safety mission as a critical concern the Presiding Officer must take into account when establishing deadlines and managing cases. When a matter fails to proceed in a timely manner, it not only results in increased costs and uncertainty for the parties and participants, it can also undermine the agency's statutory obligation to protect the public against unreasonable risks of injury and death associated with consumer products. The Commission expects that the Presiding Officer shall, whenever possible, and in in the interest of protecting public health and safety, expedite proceedings by setting shorter time limitations than the maximum limits imposed by the rules, with the goal of issuing an Initial Decision within 1 year from the date of the complaint.

As part of our goal of aligning the Rules of Practice with the updated Federal Rules, we also propose to add a statement to § 1025.1, indicating that, except where stated otherwise, parties shall follow the Federal Rules on certain discovery matters. We believe that following the Federal Rules on discovery matters would streamline the discovery process, and thereby introduce increased efficiencies to advance our goal of avoiding unnecessary delay. Through this change, we would redefine the scope of discovery to encompass Rule 26 of the Federal Rules, and would follow generally, with some stated exceptions discussed below, the Federal Rules' procedures on pretrial discovery, including interrogatories (Fed. R. Civ. P. 33); production of documents, electronically stored information, and tangible things (Fed. R. Civ. P. 34); requests for admission (Fed. R. Civ. P. 36); and depositions (Fed. R. Civ. P. 30–32). We would not follow the Federal Rules on subpoenas, which by statute, requires Commission approval. We also propose additional minor and non-substantive changes to the Rules of Practice for clarity.

Proposed Changes to § 1025.3 (Definitions)

One of our goals in revising our Rules of Practice is to update the Rules of Practice to reflect current litigation practices and advances in technology. To recognize that ESI, *i.e.,* information created, manipulated, communicated, stored, and best utilized in digital form, or requiring the use of computer software and hardware, has become a significant part of civil discovery, we propose in new § 1025.3(e) to follow the definition of ESI in the Federal Rules. We believe this definition would provide clarity and allow parties and participants to be guided by the developing case law and scholarship on electronic discovery.

We also propose several additional non-substantive changes, including a new § 1025.3(f) that would reference our rule on *ex parte* communications. We further propose to add a new § 1025.3(g) to clarify that references to the Federal Rules throughout this proposed rule refer to the Federal Rules of Civil Procedure. Because we propose additional paragraphs, we would also re-designate the paragraphs in this section to reflect these changes. Finally, we propose a clarified definition of CPSC's "Secretariat" in current § 1025.3(n).

Subpart B—Pleadings, Form, Execution, Service of Documents

Proposed Changes to § 1025.11 (Commencement of Proceedings)

Section 1025.11 sets out requirements for the filing of a complaint in an adjudicative proceeding. In § 1025.11(a), we propose revisions to reflect organizational changes within the Commission since adoption of the current Rules of Practice. Complaint Counsel would be authorized to sign a complaint following Commission approval, rather than the Assistant Executive Director for Compliance and Enforcement, as the current rule requires.

Currently, § 1025.11(b)(3) requires that a complaint contain "[a] list and summary of documentary evidence supporting the charges." We propose eliminating this requirement given the mandatory disclosures of evidence set forth in Federal Rule 26(a)(1)(A), which we propose following as part of § 1025.31, *General provisions governing discovery,* discussed below.

We propose adding a new § 1025.11(d) to clarify that a Commission action to obtain a preliminary injunction from a federal district court pursuant to 15 U.S.C. 2064(g) shall not serve as the basis to stay proceedings under these rules. In light of the extensive time frame for resolving matters in adjudicative proceedings, it is the Commission's strong expectation that if the respondent fails to agree to stop sale and distribution of a product which the Commission has reason to believe presents a substantial product hazard, Commission staff will, within a reasonable amount of time following the commencement of proceedings under this part 1025, apply to a district court of the United States for the issuance of a preliminary injunction (pursuant to 15 U.S.C. 2064(g)) to restrain the distribution in commerce of such product pending the completion the adjudicative proceedings. For this reason, and in furtherance of its mission to protect public health and safety, the Commission strongly urges the Presiding Officer to, whenever practicable, shorten the time limitations imposed by these rules and endeavor to issue an Initial Decision as soon as possible.

We also propose several additional minor and non-substantive changes in grammar throughout this paragraph.

Proposed Changes to § 1025.13 (Amendments and Supplemental Pleadings)

Section 1025.13, titled, *Amendments and supplemental pleadings,* currently states that the Presiding Officer may allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceedings or cause undue delay. When this section was initially proposed in 1977, commenters expressed concern that granting such broad discretion risked "usurping the Commission's function" to serve as the sole source of administrative litigation seeking to compel recall of consumer products. 45 FR 29 206–207 (May 1, 1980). At the time, stating that the Rules "provide adequate procedures for the parties to argue their respective positions and an adequate framework for the exercise of the broad discretion vested in the Presiding Officer," the Commission concluded that, under § 1025.13, "neither the Presiding Officer nor the Commission staff is usurping the Commission function." 45 FR 29208. We now believe it may be helpful to provide additional clarity.

The Commission proposes to amend § 1025.13 to require that the Presiding Officer refer to the Commission any amendment that would (1) have the effect of adding to or removing from the litigation any party or count, (2) fall outside the scope of an authorized complaint, or (3) broaden staff's authority under a complaint.

Proposed Changes to § 1025.14 (Form and Filing of Documents)

As an initial matter, we are proposing to revise the title of this section to *Form and filing of pleadings and other documents* to clarify that the requirements of this section pertain to pleadings, as well as other documents. In § 1025.14(a), we propose that all pleadings and documents shall be filed electronically with the Secretariat and the Presiding Officer, unless the Presiding Officer orders otherwise. We propose this change because the rule, as written, is outdated and does not reflect current practice for filing pleadings and evidence electronically, which has become the norm in most state and federal courts. Moreover, the current rule requires the Office of the Secretary to maintain the official file, in paper format, access to which is limited by the operational hours of the Commission. Thus, our proposed change would not only reflect current technological advances, but the change also would expand public access to the official file. The proposed rule would, however, allow the Presiding Officer discretion to permit exceptions to the electronic filing requirement so that paper documents may be filed if the Presiding Officer so orders.

To emphasize our preference for electronic filing, we propose to omit existing language stating that documents "may be filed in person or by mail." We also propose changes, consistent with our proposal on electronic filing, establishing the filing date for documents. Electronically filed documents would be deemed filed on the date of the electronic filing; however, recognizing the broad discretion afforded the Presiding Officer, we propose adding language stating that the Presiding Officer may allow alternative methods of filing, by order, and that such order shall state the applicable date on which such pleadings or documents are deemed filed.

New language in proposed § 1025.14(c) would also eliminate our current requirement that three copies of pleadings be filed, a superfluous requirement in an era where digital copies are created easily. Under our proposed change, a single electronic copy must be filed with the Secretariat and the Presiding Officer; however, we propose to add language that acknowledges that the Presiding Officer may order paper filings.

In § 1025.14(d), we would require that the original of each document that is filed electronically be signed electronically.

Section 1025.14(e) currently anticipates filing of paper documents, and sets standards for such filings. We propose to amend this paragraph to establish requirements that address the electronic filing of pleadings and documents. In § 1025.14(e)(1), we would require an electronic address in addition to a mailing address. Section 1025.14(e)(2) would require filing electronic text documents in a format that uses 12-point font with double spacing and prints on standard letter-sized paper with 1-inch margins. This paragraph also would include the requirement that electronic documents and files that cannot be readily printed, such as large spreadsheets, videos, or photographs, be identified by technical format and also include information on the program or protocol required to review the information. The font, spacing and margin requirements are consistent with Rule 32 of the Federal Rules of Appellate Procedure and Rule 102(a)(b) of the U.S. District Court for the District of Maryland.

We also propose to update § 1025.14(e)(3), which currently states:

"[d]ocuments that fail to comply with this section may be returned by the Secretary." Under the proposed § 1025.14(e)(3), documents that do not meet the filing requirements, or electronic documents that cannot be opened or read, may be returned to the filer by the Secretariat or the Presiding Officer. Lastly, we propose to add language to § 1025.14(e)(3) to allow a Presiding Officer to permit deviation from the form prescribed in this section, for good cause shown, a change that underscores our goal of vesting broad discretion in the Presiding Officer to maximize efficiency and flexibility in how an adjudication proceeds.

Proposed Changes to § 1025.15 (Time)

In § 1025.15(a) we would make several non-substantive changes, including a clarification of the title to make clear that the computation of time refers to days. We also would make clear that "day" means calendar day. We further propose to clarify the existing language to state that the day on which the event triggering the period shall not be included in the calculation of time, but each calendar day thereafter shall; and that if the last day of the time period falls on a weekend or legal holiday, the time period shall be tolled until the next day that is not a weekend or a legal holiday. We also propose to update this section to delete references to specified legal holidays in the existing rule and refer instead to the legal public holidays identified in 5 U.S.C. 6103. This revision would include Martin Luther King, Jr.'s birthday as a holiday and would allow the Rules of Practice to reflect any changes to the list of legal public holidays made in the future.

We further propose to amend § 1025.15(b) to state that whenever a party is required or permitted to do an act within a prescribed period after service of a document and the Presiding Officer permits service by mail, three (3) days shall be added to the prescribed period. This amendment recognizes that while electronic service is preferred, service by mail may be allowed by order of the Presiding Officer; if such service is made by mail, three additional days would be added to the date by which the recipient must perform a subsequent action.

In § 1025.15(c) regarding the extension of time limits, we propose to add language clarifying that initial decisions are decisions issued under § 1025.51 of the Rules of Practice.

We also propose to add a new paragraph (d), which would be titled *Stay of proceedings,* to clarify that if a stay of proceedings is granted by order of the Presiding Officer or Commission, the time limits specified in these rules shall be automatically tolled during the period while the stay is in effect.

Proposed Changes to § 1025.16 (Service)

We propose several changes to § 1025.16, titled, *Service,* to reflect current litigation practice and advancements in technology. First, we propose to revise § 1025.16(a) to reflect proposed changes to § 1025.14 that would require the Presiding Officer to maintain the official file for an adjudicative proceeding, if practicable. Second, our proposed § 1025.16(b) would remove subpoenas from the service requirements of this section because we address those requirements in § 1025.28(e), discussed below. We also propose a new § 1025.16(b)(1) that would allow service of a complaint, ruling, petition for interlocutory appeal, order, or decision to be made by electronic means if ordered by the Presiding Officer or by agreement of the parties. We also propose renumbering the subparagraphs of § 1025.16(b) to reflect this addition. Third, in proposed § 1025.16(b)(2), we would permit service by commercial carrier, a change that reflects common practice today.

We also propose in § 1025.16(b)(3) to add "a limited liability company" to the list of corporate entities that may be served, and would add "entity" in the title of the paragraph, for clarity. We propose this change to capture the types of legal entities that exist and may be the subject of an administrative complaint. Finally, we propose to add language in new § 1025.16(b)(4) that, recognizing the preference for electronic service of documents, clarifies the circumstances in which delivery of a document to an address is appropriate.

In § 1025.16(c), we would establish electronic service as the primary mode of service for other documents, unless otherwise ordered by the Presiding Officer or agreed to by the parties. Proposed changes to § 1025.16(e), which provides a form for certificates of service, and § 1025.16(f), which sets the date of service of documents, would provide for electronic filing. Consistent with the establishment of electronic filing, we propose to delete reference in § 1025.16(e) to "the original of every document," and instead, require that "every document" be accompanied by a certificate of service.

Proposed Changes to § 1025.17 (Intervention)

We are proposing to revise § 1025.17(a), (b), and (c) to identify accurately the Secretariat of the Commission. We also propose to correct a typographical error in § 1025.17(c)(5). We do not intend these changes to be substantive.

Proposed Changes to § 1025.18 (Class Actions)

We are proposing to revise § 1025.18(a)(1) for clarity. The general word "class" would be replaced with the more specific phrase "class of respondents."

Proposed Changes to § 1025.19 (Joinder of Proceedings)

We propose to revise the title of § 1025.19, currently *Joinder of proceedings,* to *Consolidation of proceedings* because the rule, modeled on Rule 19 of the Federal Rules, actually describes consolidation, rather than joinder, a different legal concept. In addition, we propose new § 1025.19(a) to state that the Presiding Officer or the Commission may order the actions involving a common question of law or fact be consolidated for any purpose if the Presiding Officer finds that consolidation will "avoid unnecessary cost or delay." This would change the current rule, which permits the Presiding Officer or the Commission to consolidate actions only "for the purpose of hearing or Commission review." This proposed language expands the authority of the Presiding Officer to consolidate actions or portions of actions, as appropriate, a change that is consistent with our goal of assigning broad discretion to the Presiding Officer in the conduct of a proceeding. In practice, the current rule may lead to uncertainty about whether cases may be consolidated for limited purposes, such as discovery, where there are multiple respondents. Under the proposed rule, we make clear that the Presiding Officer may order partial consolidations on issues including, but not limited to, discovery, pretrial procedure, and/or hearing.

We propose to add a new § 1025.19(b), including insertion of a title, for clarity.

Subpart C—Prehearing Procedures, Motions, Interlocutory Appeals, Summary Judgments, Settlements

Proposed Changes to § 1025.21 (Prehearing Conferences)

We propose changes to § 1025.21, *Prehearing conferences,* to reflect updated procedures in the Federal Rules. Specifically, the proposed changes would require a preliminary meeting of the parties before discovery commences, followed by an initial prehearing conference with the Presiding Officer. We believe these preliminary steps would streamline the process, focus the issues, and advance our goal of achieving a fair and expeditious proceeding.

Under proposed § 1025.21(a), the parties would be required to conduct a preliminary meeting no later than 5 days after the answer is due by the last answering party. At the preliminary meeting, the parties would be directed to discuss the nature and basis of their claims and defenses and the possibilities for settlement or resolution of the case. The proposed change also would require parties to attempt to agree on a proposed discovery plan with a schedule for depositions of fact witnesses, the production of documents and ESI, and the timing of expert discovery. In addition, the proposed revision would require the parties to seek agreement on the scope of electronic discovery, including specified time periods for which electronic information is sought, and agree on the format in which electronic discovery would be produced. The parties also would be required to develop a preliminary time estimate for the evidentiary hearing and to attempt to reach agreement on any other matters to be determined at the prehearing conference. We believe these changes would help expedite the process by setting an earlier deadline for a meeting of the parties and by having the parties resolve issues through mutual agreement.

Under proposed § 1025.21(b), which would be titled, *Initial prehearing conference,* we propose to modify the issues to be discussed at the prehearing conference to provide a more concise list of issues to be addressed. We believe a tailored agenda for the prehearing conference would maximize efficiency and concentrate focus on major issues. At the initial prehearing conference, the parties, with the guidance of the Presiding Officer, would address a range of issues, including their factual and legal theories, the current status of pending motions or petitions, the date for the evidentiary hearing, steps taken to preserve evidence, and the scope of anticipated discovery and a discovery plan. This list would be for illustrative purposes only and would not be intended to restrict the topics that could be discussed at the prehearing conference under the proposed revision to this section.

In § 1025.21 we also propose to re-designate existing paragraph (b), *Public notice,* as paragraph (c), and to re-designate existing paragraph (c), *Additional conferences,* as paragraph (e).

Under proposed § 1025.21(d), the Presiding Officer would be required to enter an order setting forth the results of the initial prehearing conference, establishing a timeline for discovery, motions, and any other appropriate matters. We make this proposal to address the inadequacy of the current requirement that the Presiding Officer issue a prehearing order only after the conclusion of the final prehearing conference, a point late in the process that does not provide sufficient time for potential resolution of issues. We believe that the parties and the Presiding Officer would benefit from establishing a schedule earlier in the proceedings, and we also trust that such a schedule would clarify issues and expedite the proceedings. In addition, in § 1025.21 we propose to re-designate existing paragraph (d), *Reporting,* as paragraph (h), and make it consistent with our proposal in § 1025.41(a) to exclude Commissioners and their staffs from attending or viewing public hearings prior to the Presiding Officer's initial decision. In paragraph (e), which we propose to re-designate paragraph (g), we would revise the title to be *Final prehearing order,* for clarity. We also propose to remove references to the format set forth in appendix I, because, as discussed below, we are proposing to delete the appendix.

Under proposed § 1025.21(f), we would require a final prehearing conference as close to the evidentiary hearing as practicable. Under the current rules, it is not clear that such a conference should occur; our proposed change would make clear that such a conference would be mandatory. We believe that such a conference would benefit the parties and the Presiding Officer by focusing the issues before the hearing and resolving final evidentiary matters.

Proposed Changes to § 1025.22 (Prehearing Briefs)

We are proposing to revise this section to require the filing of prehearing briefs, which, under the current Rules, are discretionary. We believe that prehearing briefs should be mandatory because information contained in these briefs would set the necessary framework for the proceeding, clarifying the facts to be proven, the order of proof, and the issues to be decided.

Proposed Changes to § 1025.23 (Motions)

We propose to change this section to clarify rules governing the filing of motions. Under the current rule, all motions, except for disqualification motions, must be addressed to the Presiding Officer. Our proposed revision to § 1025.23(a) would add subpoena applications to the list of motions that would not be addressed to the Presiding Officer. We propose this change because subpoena applications follow distinct procedures set forth in § 1025.38(c), discussed below. In § 1025.23(b), we propose a minor, non-substantive clarification, changing "Secretary" to "Secretariat." Proposed changes in § 1025.23(c) would include a revision of the title to *Response and replies,* which reflects our proposed addition regarding reply briefs. We also would expand the time to respond to motions from 10 days to 14 days because, in staff's experience, 10 days does not provide adequate time to respond to a motion, particularly when weekend days are considered in the computation. We believe the addition of 4 days to respond to a motion would provide sufficient time to prepare and submit a response without burdening the process with unnecessary delay. Additionally, this paragraph would expressly permit replies, which currently are available only by leave of the Presiding Officer or the Commission. In our experience, replies are granted routinely, and this change merely recognizes that practice, eliminating the unnecessary step of seeking leave. This paragraph also would permit the Presiding Officer (or the Commission, as the case may be), to authorize the filing of additional briefs, on good cause shown, a change that reflects our belief that the broad authority to administer a proceeding should be vested with the Presiding Officer. We further propose that additional briefs, if permitted, must be filed within 5 days after service of the pleading to which the brief replies.

Proposed Changes to § 1025.24 (Interlocutory Appeals)

Section 1025.24 currently lists four exceptions to the general rule against interlocutory appeals. Proposed § 1025.24 would add a fifth exception, permitting interlocutory appeal where the Presiding Officer grants or denies a motion to amend a complaint under § 1025.13. The proposed revisions to § 1025.13 are intended to reiterate that only the Commission is empowered to issue administrative complaints and that any amendments cannot have that effect without Commission approval. This revision to § 1025.13 is intended to ensure that, if a party believes the Presiding Officer has improperly ruled on such an amendment without Commission approval, that party will have the opportunity to appeal that ruling immediately, without being compelled to litigate a matter in order to obtain a Commission decision on whether or not that party should be in the litigation at all.

We propose to revise § 1025.24(b)(1)(ii) to clarify that nature of the proceeding from which an interlocutory appeal may be filed. We propose to revise § 1025.24(b)(2) to state that the Commission may decide a petition for an interlocutory appeal based on the existing record, or the Commission may request additional briefing and oral presentation. As written, the rule currently imposes an obligation on the Commission to decide the petition or request further briefing. Our proposed change makes clear that such a binary decision is not required and that the Commission has the option of deciding the petition based on the record, or the Commission may request further briefing or oral presentation.

Proposed Changes to § 1025.25 (Summary Decisions and Orders)

We are proposing changes to § 1025.25(a) to align our rule more closely with Rule 56 of the Federal Rules. Under our current Rules of Practice, the movant does not have to file a statement of material facts not in dispute, nor does the respondent have to file a statement of material facts that respondent contends are in dispute. The proposed change would require that motions and oppositions to motions be accompanied by separate statements of material facts about which the movant asserts there is no dispute and about which the opposing party contends there is a genuine dispute. We believe this change will enhance efficiency because filing statements of material fact would help pinpoint the primary issues in dispute. We also propose to revise § 1025.25(a) to conform to changes we propose to § 1025.21, discussed above, to state that a summary decision motion be filed in accordance with any prehearing order issued by the Presiding Officer. The time for filing the motion would also be defined, providing that such motions to be filed up to thirty (30) days following the close of discovery. We are proposing this change because we believe this time period would afford the Presiding Officer sufficient time to carefully consider such motions, and would encourage resolution of part or all the matter well in advance of the scheduled hearing date.

We also propose to revise § 1025.25(b) to require that a response to a summary decision motion be accompanied by a statement of material facts that the opposing party contends are in dispute, a change that will enhance focus on the main issues in dispute. We also propose to modify § 1025.25(c) to add specific items in the record that should be considered by the Presiding Officer in resolving the motion, a change that mirrors Rule 56 of the Federal Rules.

Proposed Changes to § 1025.26 (Settlements)

We are proposing to revise § 1025.26(b) to clarify that motions that request that the Presiding Officer transmit a proposed consent agreement to the Commission must be filed *in camera*. In addition, we propose to amend this paragraph to state that offers of settlement shall be served on complaint counsel. Thus, the revised rule would ensure that complaint counsel would be apprised of any non-jointly submitted offers of settlement. Under the current rule, a party may submit any settlement offer to the Commission without notifying complaint counsel. Because we are proposing in this rule to remove the *ex parte* prohibition on communications in the context of settlement agreements, discussed in § 1025.68, we are proposing that complaint counsel be made aware of all such offers so that complaint counsel can communicate knowledgeably to the Commission about the substance of such offers.

In § 1025.26(c)(1) through (4), we propose a number of non-substantive editorial changes. In § 1025.26(c)(5), we propose to add language that an offer of settlement should also include a list of "acts or practices that the respondent shall affirmatively undertake." This addition acknowledges the authority of the Commission, after an opportunity for hearing, to order a firm to undertake certain actions pursuant to section 15(d) of the CPSA.

Under current § 1025.26(d), the Presiding Officer may transmit to the Commission offers of settlement that meet the requirements of form and content set forth in § 1025.26(c). We propose to revise this paragraph to require the Presiding Officer to transmit all non-frivolous, non-duplicative settlement offers to the Commission, removing the discretion provided to the Presiding Officer in the current rule. We propose this change because we believe the Commission should review all non-frivolous, non-duplicative settlements with the goal of advancing resolution of a matter, if possible. In addition, we propose that, to be transmitted, such an offer must comply with the requirements of § 1025.26(b), as well as § 1025.26(c).

We also are proposing non-substantive changes in § 1025.26(e) and (g).

Subpart D—Discovery, Compulsory Process

Proposed Changes to § 1025.31 (General Provisions Regarding Discovery)

The Commission proposes to revise § 1025.31(a) to require parties to conduct discovery in accordance with Rule 26 of the Federal Rules, with several exceptions, discussed below. Rule 26 imposes a number of requirements, such as requiring initial disclosures, prehearing conferences, scope of discovery, and limitations on the timing, frequency and extent of discovery. Rule 26 also sets forth provisions governing discovery of material prepared in anticipation of trial, expert discovery, and requests for protective orders. Under the current rule, methods, sequence and scope of discovery are addressed in a general fashion. We believe that adopting the detailed procedures set forth in Rule 26 will achieve earlier and more meaningful coordination between the parties and will advance the efficient progress of an adjudicative proceeding.

Although we intend largely to follow Rule 26, we propose to depart from Rule 26 procedures in a number of ways. Specifically, regarding the time periods for discovery, we will not follow Rule 26 guidance and will instead allow schedules to be set at the discretion of the Presiding Officer, unless a specific time frame is set forth in our rules. We expect the Presiding Officer to set appropriate timelines as the facts may dictate or the comparative complexity of a matter requires. We also expect that, whenever possible, the Presiding Officer will shorten schedules, particularly where expedited hearings would serve the public interest, or where issues do not require expert discovery or lengthy evidentiary hearings.

In addition, in proposed § 1025.31(a), we would require that initial disclosure of information be produced no later than 5 days after the preliminary meeting of the parties. This proposed rule shortens the 14-day time frame for such disclosures that is afforded under the Federal Rule, a step that furthers coordination among the parties and encourages expeditious resolution of issues. We also propose that our proceedings not adhere to Rule 26 requirements that experts must produce a written report (Rule 26(a)(2)(B)) because such reports may not be practicable in adjudicative matters that proceed on an expedited schedule. We also adopt the provisions governing protective orders in Rule 26(c), but we have modified the Rule to recognize that in adjudicative proceedings under part 1025, such motions shall be made to and decided by the Presiding Officer. In addition, we propose that our proceedings not adhere to Rule 26(f) regarding conference timing, content, and discovery plan because such matters are governed by the proposed revisions to § 1025.21, which allow the Presiding Officer to impose deadlines and shorten time frames, as necessary.

Additionally, we propose changes in newly designated § 1025.31(b), *Completion of discovery,* to state that the 150-day standard discovery period controls fact discovery but does not control expert discovery, which may extend beyond the 150-day limit. Moreover, our proposed revisions would vest the Presiding Officer with the discretion to establish a time frame for completion of expert discovery. We propose these changes because in our experience expert discovery is more efficient after fact discovery is completed. For less complex matters, the Presiding Officer is vested with the discretion to shorten deadlines and time frames under § 1025.21 of this Rule. Because we are following Rule 26 in large part, we are proposing to omit current paragraphs (a) through (i). We also note that, in following Rule 26, parties are not required to file discovery with the Secretariat and the Presiding Officer. Instead, parties would serve discovery responses on each other, thus relieving the Secretariat and the Presiding Officer of the burden of maintaining a voluminous amount of information.

Proposed Changes to § 1025.32 (Written Interrogatories to Parties)

We propose to revise this section to follow Rule 33 of the Federal Rules (*Interrogatories to Parties*), including the number, scope, and timing of interrogatories, the requirements of answers and objections, and the option to produce business records, so that we can maximize efficiency and reduce undue delay. Under the proposed change, for example, interrogatories would be limited to 25. The current rules do not impose any limits, thereby inviting overly burdensome requests and potential abuse that could impede the progress of a matter. Adopting Rule 33 of the Federal Rules would allow the Presiding Officer to alter the limits on the frequency and extent of discovery pursuant to Rule 26(b).

Because we propose to follow the Federal Rules on interrogatories, we also propose to omit § 1025.32(a) through (d) of the current rules.

Proposed Changes to § 1025.33 (Production of Documents)

The Commission proposes to revise the title to *Production of documents, electronically stored information, and tangible things; access for inspection and other purposes,* to reflect the expanded types of information covered by this section. In addition, we propose to revise this section to follow, with one exception, Rule 34 of the Federal Rules (*Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes*). This provision governs the number, scope, and timing of information requests, the requirements of responses and objections, and Rule 34's treatment of production of ESI. We believe this proposed change would maximize efficiency because the proposed procedure would align our discovery practice with discovery under the Federal Rules and case law interpreting the Federal Rules, and would provide specific direction on the discovery of ESI, which is not specifically addressed in our current rules. However, we propose to depart from Rule 34 regarding requests for subpoenas, and propose instead that requests for subpoenas be governed by § 1025.38 of our Rules of Practice, as discussed below. Because we propose to follow the Federal Rules for the production of documents, we also propose to omit § 1025.33(a) through (d).

Proposed Changes to § 1025.34 (Requests for Admission)

We propose to revise this section to follow, with one exception, Rule 36 of the Federal Rules (*Requests for Admission*). We would not follow Rule 36 regarding the award of expenses under Rule 37(a)(5) because expenses are not authorized under our Rules of Practice; rather, parties may follow the procedures set forth in § 1025.70 of the Rules of Practice. Because we propose to follow the Federal Rules, we also propose to omit § 1025.34(a) through (c).

Proposed Changes to § 1025.35 (Depositions)

For efficiency reasons and ease of practice, we propose largely to follow the Federal Rules on depositions, which are familiar to most practitioners. Specifically, the Commission proposes to revise this section to follow Rule 30 (*Depositions by Oral Examination*), Rule 31 (*Depositions by Written Questions*), and Rule 32 (*Using Depositions in Court Proceedings*) of the Federal Rules, with certain exceptions discussed below. We propose that requests for subpoenas continue to be governed by § 1025.38 of our Rules of Practice. We also propose that provisions in the Federal Rules governing award of attorney's fees and expenses shall not apply. Because we propose to follow the Federal Rules, we also propose to omit § 1025.35(a) through (h).

We propose these changes because the procedures set forth in Federal Rule 30, for example, would facilitate the noticing of depositions by the parties and encourage cooperation among the litigants during the discovery process. Under our current rule, parties are required to obtain leave of the Presiding Officer to notice all depositions, and there is no limit on the number of depositions that may be noticed. Federal Rule 30 allows parties to notice depositions without leave in most circumstances, including if the parties have stipulated to the deposition and the deposition would not result in more than 10 depositions being taken by each party. In addition, a party wishing to depose a nonparty under the current rule is required to apply for a subpoena; Federal Rule 30 has no such requirement, which will expedite the discovery process. Our current rules also do not limit the length of a deposition, which can lead to protracted and costly depositions; Federal Rule 30, however, establishes a limit on the length of a deposition, limiting depositions to one 7- hour day, unless otherwise ordered by the court.

We also propose following Federal Rule 31, titled, *Depositions by Written Questions,* a practice not currently authorized by our Rules of Practice. We propose this addition because this discovery tool can be more efficient and less costly than an in-person deposition, and may facilitate a more streamlined use of additional discovery methods. We additionally propose following Federal Rule 32 titled, *Using Depositions in Court Proceedings* because the provisions of this rule address more comprehensively than § 1025.35, the appropriate uses of depositions, the objections to such use, and the form of presentation.

Proposed Changes to § 1025.36 (Motions to Compel Discovery)

The Commission proposes to revise this section to include a requirement that motions to compel discovery include a certification that the movant has, in good faith, conferred or attempted to confer with the person or party failing to make disclosure. This change is consistent with the requirements in the Federal Rules (see Federal Rule 37(a)(1)), and we believe this change would encourage resolution of the issues between parties, without intervention by the Presiding Officer.

Proposed Changes to § 1025.38 (Subpoenas)

We propose to update this section to make it consistent with our proposed changes on electronic filing, discussed above, and for clarity.

We would revise § 1025.38(b) to properly identify the Secretariat. In addition, we propose to amend § 1025.38(c) and (d) to clarify the content of, and application process for, subpoenas. Specifically, we propose to remove the paper filing requirement, eliminate the requirement that applications be submitted in triplicate, and delete other requirements related to paper filing.

Additionally, in § 1025.38(e), we propose to allow subpoena service to nonparties, as set forth in § 1025.16(b)(2) through (5), which allows for service by a variety of means, but does not permit electronic service. Because nonparties may not have verified electronic addresses, and certification of receipt is not required, service of a subpoena by the other specified methods is more reliable. For parties, we propose allowing for service in any of the methods set forth in § 1025.16(b)(1) through (5). We believe these proposed changes would increase the efficiency of subpoena service because the revisions allow for multiple methods of service, and, in particular, permit electronic service among parties, where the parties have agreed to such methods of service or the Presiding Officer has permitted these methods of service. Additionally, § 1025.38(f) would permit, in addition to mail carrier service, return of service of subpoenas by commercial carrier, a change that reflects common practice today. We also propose to eliminate the requirement that a copy of the subpoena be returned to the Secretary. In addition to other minor and non-substantive changes in § 1025.38(g), we propose to clarify that a motion to quash or limit should be ruled on by the Commission as a time critical matter in accordance with the Commission Decision Making Procedures.

Proposed Changes to § 1025.39 (Orders Requiring Witnesses To Testify or Provide Other Information and Granting Immunity).

We propose deleting this section and other distinctions relating to the Flammable Fabrics Act ("FFA") throughout these rules because they are no longer necessary in light of the Commission's enhanced authority set forth in section 214 of the Consumer Product Safety Improvement Act of 2008, which permits the Commission to take action under section 15 of the Consumer Product Safety Act for violations of that statute and any other Act enforced by the Commission.

Subpart E—Hearings

Proposed Changes to § 1025.41 (Hearings; General Rules)

The Commission proposes to revise § 1025.41(a) to clarify that Commissioners and their staffs should not attend or view public hearings concerning matters that may become subject of review by the Commission as the appellate body. We also propose to revise § 1025.41(b) to clarify that adjudicative proceedings shall be held in one location, absent unusual circumstances. Based on staff experience and common practice in other agencies, we also propose to limit the duration of a proceeding to no more than 210 hours, absent a showing of good cause. We believe this provides ample time for the proper conduct of most hearings, but allows flexibility to alter the time frame if circumstances warrant. We propose other minor, non-substantive changes in § 1025.41(c) for clarity.

Proposed Changes to § 1025.42 (Powers and Duties of Presiding Officer)

The Commission proposes to revise § 1025.42(a)(6) to state that, in addition to procedural motions, the Presiding Officer is empowered to consider and rule on evidentiary motions and other issues, as appropriate. We propose other minor, non-substantive changes in § 1025.42(a)(3) and (b), for clarity. In proposed § 1025.42(d), we make clear that, in addition to the Commission, a Presiding Officer shall not be responsible to, or subject to the supervision of, a Commissioner or a member of a Commissioner's staff in performance of the adjudicative function.

In § 1025.42(e), we propose to clarify that the Commission shall consider a motion to disqualify the Presiding Officer only if the matter has been decided and appealed to the Commission. In addition, we propose other minor, non-substantive changes.

Proposed Changes to § 1025.43 (Evidence)

The Commission proposes to supplement § 1025.43(a) to provide specific examples of the ways in which the Federal Rules of Evidence may be relaxed to best serve the interests of justice. More specifically, the proposal states that evidence constituting hearsay may be admitted if it is relevant, material, and bears satisfactory indicia or reliability so that its use is fair. In addition, we are proposing a minor, non-substantive change in § 1025.43(d)(1)(i) for uniformity. We also propose to remove an unnecessary "reserved" paragraph in § 1025.43(e) and re-designate paragraph (f) as paragraph (e).

Proposed Changes to § 1025.44 (Expert Witnesses)

The Commission proposes to revise § 1025.44(a) to align our rule on experts more closely with the standard set forth in Rule 702 of the Federal Rules of Evidence (*Testimony by Expert Witnesses*). We make this change to maximize efficiency by working within an evidentiary framework with which most practitioners are familiar and allowing the parties and Presiding Officer to be guided by case law interpreting the Federal Rules.

We also propose revising § 1025.44(b) to make clear that the Presiding Officer has the authority to order expert testimony to be in writing and filed on the record. In addition, we propose to clarify that the Presiding Officer has the discretion to allow live testimony in lieu of a written submission. This change would be in keeping with our goal of vesting broad discretion with the Presiding Officer in the conduct of a proceeding.

We propose to revise § 1025.44(c) and (d) to conform to our proposed revision in § 1025.44(b).

Proposed Changes to § 1025.45 (In Camera Materials)

We propose to revise § 1025.45(b) to correct typographical and grammatical errors, and to clarify the standard that applies to *in camera* treatment of documents and testimony. We also propose to move language related to the length of time for *in camera* treatment from § 1025.45(b) to § 1025.45(b)(3). Additionally, we propose adding language to § 1025.45(e) to make clear that *in camera* materials may not be released to the public until the order granting *in camera* treatment expires. We propose to revise § 1025.45(f) for clarity.

Proposed Changes to § 1025.46 (Proposed Findings, Conclusions, and Order)

The Commission proposes to revise this section to make the filing of post-hearing briefs mandatory. Under the current rule, parties may file post hearing briefs, but are not required to do so. Because we believe the public and the Presiding Officer would benefit from a concise but comprehensive summary of the matter at issue, we propose that this filing be mandatory. In addition, we propose to limit post-hearing briefs to thirty (30) pages. Currently, the rule does not impose a page limit, and we believe parties should be encouraged to file concise pleadings. We also propose to limit replies to the discretion of the Presiding Officer so that the pace of the adjudication at this juncture is not slowed unnecessarily by the filing of excessive briefing materials. We propose other non-substantive changes for clarity.

Proposed Changes to § 1025.47 (Record)

The Commission proposes to revise § 1025.47(a) of this section to delete the requirement for an "official court reporter of the Commission" because the Commission has no official court reporter. The revised language would require that a hearing shall be "recorded and transcribed by a court reporter under the supervision of the Presiding Officer." We are proposing other non-substantive changes for clarity, including a revision to the appendix citation in the Federal Advisory Committee Act.

Proposed Changes to § 1025.48 (Official Docket)

The Commission proposes to revise this section to require that the official docket be maintained electronically, in keeping with changes we are proposing throughout our Rules of Practice to update our procedures to reflect advances in technology. We also propose to delete the statement that the docket would be available for inspection by the public during normal business hours as unnecessary because the docket would be available electronically. We propose other non-substantive changes for clarity.

Proposed Changes to § 1025.49 (Fees)

The Commission proposes to revise § 1025.49(a) to allow parties to modify this provision by agreement.

Subpart F—Decision

Proposed Changes to § 1025.51 (Initial Decision)

Under current § 1025.51(a), the Presiding Officer shall endeavor to file an Initial Decision within sixty (60) days after the record closes in a case, or after the filing of post-hearing briefs, whichever is later. The Commission proposes to revise § 1025.51(a) to require the Presiding Officer to file the Initial Decision within a fixed deadline of 60 days. This change is consistent with the Commission's goal of avoiding unnecessary delay and ensuring that a matter progresses in a timely manner to serve the interests of justice.

The current rules impose numerous interim deadlines, but do not explicitly provide for a total time limit from complaint to Initial Decision. Staff advises that most cases will take more than 1 year for the Presiding Officer to render an Initial Decision. The Commission believes that the Presiding Officer has considerable discretion in managing cases to ensure the timely and efficient resolution of proceedings, and the Commission expects that the Presiding Officer shall endeavor to make those proceedings as swift as practicable in the interest of due process and the protection of consumer health and safety.

The administrative procedures at sister agencies such as the Securities and Exchange Commission ("SEC"), the Consumer Financial Protection Bureau ("CFPB"), and the Federal Trade Commission ("FTC") employ other practices on ways to make adjudicatory proceedings more efficient, including a fixed time limit from issuance of complaint to evidentiary hearing as required by FTC Rule 16 CFR 3.11 (Commencement of Proceedings), a fixed time limit from complaint to initial decision as required by SEC Rule, 17 CFR 201.360(a)(2) (Initial Decision of Hearing Officer) and CFPB Rule, 12 CFR 1081.400(a) (Recommended Decision of the Hearing Officer), and changes to the rules that limit the scope of discovery available to parties in administrative proceedings as has been adopted by the SEC and CFPB. The Commission seeks comment on whether CPSC should adopt similar practices.

We also propose to revise § 1025.51(c) to make clear that the Commission may order that an individual, other than the Presiding Officer, may make and file an Initial Decision, if the Presiding Officer is disqualified under § 1025.42(e).

We are proposing to revise § 1025.51(d) to limit the authority of the Presiding Officer to reopen the proceedings to only those circumstances "where the interests of justice so require." We propose this change to emphasize the need for finality and to ensure timely disposition of a matter.

Proposed Changes to § 1025.52 (Adoption of Initial Decision)

We are proposing a minor, non-substantive change for consistency.

Proposed Changes to § 1025.53 (Appeal From Initial Decision)

The Commission proposes to revise the title of § 1025.53(a) to *Notices of appeal,* and we propose several additional changes for clarity.

In addition, we propose to revise § 1025.53(b) to limit appeal briefs to thirty (30) pages. Currently, the rule does not impose a page limit, and we believe parties should be encouraged to file concise pleadings. We also propose to amend § 1025.53(c) to impose the same 30-page restriction on answering briefs that applies to appeal briefs. In § 1025.53(f), we would clarify that reply briefs are not required, but if filed, they shall not exceed fifteen (15) pages.

Proposed Changes to § 1025.55 (Final Decision on Appeal or Review)

The Commission proposes to revise § 1025.55 to remove the word "endeavor." By doing so, the Commission commits to issue its final decision on appeal or review within 90 days after the filing of all briefs or after receipt of transcript of the oral argument, whichever is later. We are also proposing a minor, non-substantive change in § 1025.55(a) for clarity.

Proposed Changes to § 1025.56 (Reconsideration)

We are proposing minor, non-substantive changes for clarity and to correct a typographical error.

Proposed Changes to § 1025.57 (Effective Date of Order)

The Commission proposes to revise § 1025.57(a) and (b) to clarify that Commission orders in adjudicative proceedings under the CPSA or the FFA become effective upon receipt by the Respondent.

In § 1025.57(b)(1), we propose an additional, non-substantive change for clarity. In § 1025.57(b)(2), we propose corrections for citation errors.

Proposed Changes to § 1025.58 (Reopening of Proceedings)

The Commission proposes to revise § 1025.58(c)(2) for clarity.

In proposed § 1025.58(e)(2), we make clear that the Commission may direct the Presiding Officer to conduct additional hearings if the pleadings raise substantial factual issues. We are proposing this change because as written it is unclear under whose auspices such a hearing would be conducted and recognize that such a hearing should be conducted by the Presiding Officer as the finder of fact. We further propose to clarify in this section, consistent with proposed changes to § 1025.46, to state that post hearing briefs are mandatory. We propose one other non-substantive change for clarity.

Subpart G—Appearances, Standards of Conduct

Proposed Changes to § 1025.63 (Written Appearances)

The Commission proposes to revise § 1025.63(a) and (b) to conform the requirement for the filing of a notice of appearance to our proposed electronic filing changes to § 1025.14 of the Rules of Practice.

In § 1025.63(b), we propose other minor, non-substantive changes for clarity.

Proposed Changes to § 1025.65 (Persons Not Attorneys)

The Commission proposes to revise § 1025.65(a) for clarity.

Proposed Changes to § 1025.66 (Qualifications and Standards of Conduct)

The Commission proposes to revise § 1025.66(d) for clarity.

Proposed Changes to § 1025.67 (Restrictions as to Former Members and Employees)

The Commission proposes to retitle this section to: *Restrictions as to former Commission members,* to align the title with the text in § 1025.67(a). We also would revise § 1025.67(a) to include additional statutory and regulatory restrictions and propose to revise § 1025.67(c) for clarity.

Proposed Changes to § 1025.68 (Prohibited Ex Parte Communications)

We propose to add a new § 1025.68(b) to state that, except to the extent required for disposition of *ex parte* matters authorized by law or by this part, *ex parte* prohibitions apply to a number of circumstances. Specifically, new § 1025.68(b)(1) would prohibit *ex parte* communications relevant to the merits of an adjudication by any interested person not employed by the CPSC to any decision maker during the pendency of a proceeding under the Rules. Under the current rule, an *ex parte* communication is defined as a communication concerning a matter in adjudication made to a decision-maker by any person subject to the Rules of Practice. Our proposed change, which is consistent with the APA, would broaden the *ex parte* prohibition to include any "interested person not employed by the Commission." Additionally, new proposed § 1025.68(b)(2) would prohibit any decision maker from making an *ex parte* communication to any interested party not employed by the Commission. To conform new § 1025.68(c)(2)(i) and (ii) with our proposed new § 1025.68(b), we would omit language in those paragraphs limiting the prohibition to persons subject to these Rules of Practice and add language tracking new § 1025.68(b).

The Commission also proposes to revise § 1025.68(d) to add paragraph (d)(3) to state that *ex parte* prohibitions do not apply to communications by any party to the Commission concerning a proposed settlement agreement that has been transmitted to the Commission. We are proposing this change because we believe this would allow parties to communicate information to the Commission that might not otherwise be available to the Commission.

We also propose changes in § 1025.68(e) to clarify that the procedures for handling prohibited *ex parte* communications are also available to recipients of such communications who are not employed by the Commission. We make other, non-substantive changes to § 1025.68(e), as well.

In § 1025.68(g), we propose changes to be consistent with the proposed changes to this section discussed above, and we also propose that sanctions shall apply to any person or party who makes or causes a prohibited *ex parte* communication to be made. As currently drafted, the provision allowing sanctions applies only to persons subject to the Rules of Practice. We propose language that would allow sanctions to be imposed on a person who, while not a party, makes a prohibited *ex parte* communication and subsequently becomes a party. The proposed language, which is consistent with the adjudicative rules adopted by FTC, would authorize the Presiding Officer to impose sanctions allowed under this section, if that person later becomes a party to the proceeding.

We propose other minor, non-substantive changes for clarity.

Proposed § 1025.69 (Separation of Functions)

To clarify that Commission staff charged with investigative and prosecutorial responsibilities may not advise a decision maker or otherwise participate in a decision in a proceeding, we propose to add a new § 1025.69 titled, *Separation of functions,* setting forth the separation of functions provisions of the APA, 5 U.S.C. 554(d).

Subpart H—Implementation of the Equal Access to Justice Act in Adjudicative Proceedings With the Commission

Proposed Changes to § 1025.70 (General Provisions)

The Commission proposes to revise this section to remove outdated and confusing references to the Equal Access to Justice Act ("EAJA"). As written, the rule substantially re-states EAJA requirements existing when the rule was adopted initially. Many elements of those requirements are no longer current. To avoid updating these rules each time an element of the EAJA is changed, we propose removing references to specific EAJA requirements and stating instead that the EAJA applies to certain adjudicative proceedings before the Commission. We propose stating generally that applications for fees and expenses may be made according to the EAJA, as interpreted by the federal courts and guidance provided by the U.S. Department of Justice ("DOJ"). Such interpretative case law and DOJ guidance provide ample direction for applicants, the Presiding Officer, and the Commission in the application for, and consideration of, a request for attorney's fees and other expenses. We do not believe our proceedings warrant particularized requirements regarding EAJA and that the guidance provided by the DOJ, and as interpreted by federal courts, would be sufficient for applicants to proceed with an EAJA claim. We note too that other federal agencies, such as the CFPB, have adopted rules of practice without reference to EAJA. Because we believe DOJ and federal court guidance is sufficient, we propose to omit language in § 1025.70(a) and the entirety of § 1025.70(b) through (h). We are also proposing several minor, non-substantive changes for clarity.

Proposed Changes to 1025.71 (Information Required From Applicant)

Consistent with our goal of following DOJ and federal court guidance on EAJA, we propose omitting this section.

Proposed Changes to § 1025.72 (Procedures for Considering Applications)

Consistent with our goal of following DOJ and federal court guidance on EAJA, we propose omitting this section.

Proposed Changes to Appendix I to Part 1025 (Suggested Form of Final Prehearing Order)

We are proposing to omit this appendix, which contains a suggested form for a final prehearing order, given our proposed revisions to the requirements for prehearing conferences and orders, discussed above.

IV. Environmental Considerations

The Commission's regulations address whether the Commission is required to prepare an environmental assessment or an environmental impact statement. 16 CFR part 1021. These regulations provide a categorical exclusion for certain CPSC actions that normally have "little or no potential for affecting the human environment." 16 CFR 1021.5(c)(l). This proposed rule falls within the categorical exclusion.

V. Regulatory Flexibility Analysis

Under section 603 of the Regulatory Flexibility Act ("RFA"), when the APA requires an agency to publish a general notice of proposed rulemaking, the agency must prepare an initial regulatory flexibility analysis ("IRFA"), assessing the economic impact of the proposed rule on small entities. 5 U.S.C. 603(a). As noted, the Commission is proposing to update its Rules of Practice for Adjudicative Proceedings. Although the Commission is choosing to issue the rule through notice and comment procedures, the APA does not require a proposed rule when an agency issues rules of agency procedure and practice (5 U.S.C. 553(b)). Therefore, no IRFA is required under the RFA. Moreover, the proposed rule would not establish any mandatory requirements and would not impose any obligations on small entities (or any other entity or party).

VI. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") establishes certain requirements when an agency conducts or sponsors a "collection of information." 44 U.S.C. 3501–3520. The proposed rule would amend the Commission's Rules of Practice to adopt modern adjudicative procedures. The proposed rule would not impose any information collection requirements. The existing Rules of Practice and the proposed revision do not require or request information from firms, but rather, explain procedures for adjudicatory hearings. Thus, the PRA is not implicated in this proposed rulemaking.

VII. Executive Order 12988 (Preemption)

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. Section 26 of the CPSA explains the preemptive effect of consumer product safety standards issued under the CPSA. 15 U.S.C. 2075. The proposed Rules of Practice do not set consumer product safety standards. Rather, the proposed Rules of Practice is an adoption of updated rules of agency procedure and practice. Therefore, section 26 of the CPSA would not apply to this rulemaking.

VIII. Effective Date

In accordance with the APA's general requirement that the effective date of a rule be at least 30 days after publication of the final rule, the Commission proposes that the effective date be 30 days after the date of publication of a final rule in the **Federal Register**. 5 U.S.C. 553(d).

IX. Request for Comments

The Commission requests comments on all aspects of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this document. Written comments must be received by June 13, 2016.

List of Subjects in 16 CFR Part 1025

Administrative practice and procedure, Consumer protection.

For the reasons set forth in the Preamble, the Commission proposes to amend 16 CFR part 1025 to read as follows:

PART 1025—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

■ 1. The authority citation for part 1025 is revised to read as follows:

Authority: Authority: 15 U.S.C. 45, 1192, 1194, 1197(b), 1274, 1473(c), 2064, 2066(b), 2076, 8003.

■ 2. Revise § 1025.1 to read as follows:

§ 1025.1 Scope of rules.

The Rules in this part govern procedures in adjudicative proceedings relating to the provisions of sections 15(c), (d), and (f) and 17(b) of the Consumer Product Safety Act (15 U.S.C. 2064(c), (d), (f); 2066(b)), section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274), sections 3 and 8(b) of the Flammable Fabrics Act (15 U.S.C. 1192, 1197(b)), section 4(c) of the Poison Prevention Packaging Act (15 U.S.C. 1473(c)), and section 1404 of the Virginia Graeme Baker Pool and Spa Act (15 U.S.C. 8003), which are required to be determined on the record after opportunity for a public hearing. This part may also be applied to such other adjudicative proceedings as the Commission, by order, shall designate. A basic intent of the Commission in the development of these Rules has been to promulgate a single set of procedural rules which can accommodate both simple matters and complex matters in adjudication. To accomplish this objective, broad discretion has been vested in the Presiding Officer who will hear a matter being adjudicated to allow him/her to alter time limitations and other procedural aspects of a case, as required by the complexity of the particular matter involved. A major concern of the Commission is that all matters in adjudication move forward in a timely manner, consistent with the Constitutional due process rights of all parties. Therefore, the Presiding Officer should, whenever appropriate, expedite the proceedings by setting shorter time limitations than those generally applicable under this part. For example, the time limitation for discovery, as provided in § 1025.31(d), may be shortened, consistent with the extent of discovery reasonably necessary to prepare for the hearing. Except where stated otherwise, discovery matters shall be governed by the Federal Rules of Civil Procedure.

§ 1025.2 [Amended]

■ 3. Amend § 1025.2 by removing the words "these Rules" and adding, in their place, the words "this part".

■ 4. Amend § 1025.3 by:

■ a. Redesignating paragraphs (e) through (l) as paragraphs (h) through (o);

■ b. Adding new paragraphs (e), (f), and (g); and

■ c. Revising newly redesignated paragraphs (i) and (n).

The additions and revisions read as follows:

§ 1025.3 Definitions.

* * * * *

(e) *Electronically Stored Information* ("ESI") shall have the same meaning given to such term in the Federal Rules.

(f) *Ex parte communication* shall have the meaning set forth in § 1025.68.

(g) *Federal Rules* means the Federal Rules of Civil Procedure.

* * * * *

(i) *Party* means any named person or any intervenor in any proceedings governed by this part.

* * * * *

(n) *Secretary* or *Secretariat* means the Secretariat of the Consumer Product Safety Commission.

* * * * *

■ 5. Amend § 1025.11 by:

■ a. Revising paragraphs (a) and (b)(3); and

■ b. Adding paragraph (d).

The revisions and addition read as follows:

§ 1025.11 Commencement of proceedings.

(a) *Notice of institution of enforcement proceedings.* Any adjudicative proceedings under this part shall be commenced by the issuance of a complaint, authorized by the Commission, and signed by Complaint Counsel.

(b) * * *

(3) A clear and concise statement of the charges, sufficient to inform each respondent with reasonable definitiveness of the factual basis or bases of the allegations of violation or hazard.

* * * * *

(d) *Preliminary injunction.* A judicial proceeding for a preliminary injunction pursuant to 15 U.S.C. 2064(g) shall not serve as the basis to stay any proceedings under this part.

■ 6. Revise § 1025.13 to read as follows:

§ 1025.13 Amendments and supplemental pleadings.

The Presiding Officer may allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceedings or cause undue delay. If any proposed amendment or supplemental pleading would have the effect of adding or removing any persons as a respondent to the complaint or adding or removing any count, or if the Presiding Officer determines that the amendments or supplemental pleadings do not fall within the scope of an authorized complaint, broaden the authority granted staff in a complaint, unduly broaden the issues in the proceedings, or would cause undue delay, the Presiding Officer shall refer such amendments or supplemental pleadings to the Commission for decision.

■ 7. Amend § 1025.14 by revising the section heading and paragraphs (a), (c), (d)(1), and (e) to read as follows:

§ 1025.14 Form and filing of pleadings and other documents.

(a) *Filing.* Except as otherwise provided by order of the Presiding Officer, all pleadings and documents submitted to the Commission or the Presiding Officer shall be addressed to, and electronically filed with, the Secretariat and the Presiding Officer. Pleadings and documents filed electronically shall be deemed filed on the day of electronic filing; should the Presiding Officer permit by order an alternative method of filing, such order shall state the applicable date on which such filings are to be deemed filed.

* * * * *

(c) *Copies.* Unless otherwise ordered by the Presiding Officer, a single electronic copy must be filed with each of the Secretariat and the Presiding Officer. Each copy must be clear and legible.

(d) * * *

(1) The original of each document filed shall be signed by a representative of record for the party or participant; or in the case of parties or participants not represented, by the party or participant; or by a partner, officer or other appropriate official of any corporation, partnership, or unincorporated association, who files an appearance on behalf of the party or participant. Documents electronically filed shall be signed electronically.

* * * * *

(e) *Form.* (1) All documents shall be dated and shall contain the electronic address, telephone number, and mailing address of the signer.

(2) Electronic text documents shall be filed in a format that prints on paper approximately 8½ x 11 inches in size. Print shall be in 12-point font and double spaced, and margins shall be one inch. Electronic documents and files that cannot readily be printed, such as large spreadsheets, videos, or photographs, should be identified by format and the program or protocol required to review the information.

(3) Documents that fail to comply with this section may be returned by the Secretariat or Presiding Officer. Electronic documents and files that cannot be opened or read may be returned by the Secretariat or Presiding Officer. For good cause shown, the Presiding Officer may allow deviation from the form prescribed in this section.

■ 8. Revise § 1025.15 to read as follows:

§ 1025.15 Time.

(a) *Computation of days.* In computing any time period specified in this part or in any order filed in a proceeding subject to this part, the day of the event triggering the period shall not be included, but each calendar day thereafter shall be included. If the last day of the time period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Rule, "legal holiday" means any day designated as a legal public holiday in 5 U.S.C. 6103.

(b) *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a document and the Presiding Officer permits service by mail, three (3) days shall be added to the prescribed period.

(c) *Extensions.* For good cause shown, the Presiding Officer may extend any time limit prescribed or allowed by this part or by order of the Commission or the Presiding Officer, except for those sections governing the filing of interlocutory appeals and appeals from initial decisions pursuant to § 1025. 13 and those sections expressly requiring Commission action. Except as otherwise provided by law, the Commission, for good cause shown, may extend any time limit prescribed by this part or by order of the Commission or the Presiding Officer.

(d) *Stay of proceedings.* If a stay of proceedings is granted by order of the Presiding Officer or the Commission, the time limits specified in this part shall be automatically tolled during the period while the stay is in effect.

■ 9. Revise § 1025.16 to read as follows:

§ 1025.16 Service.

(a) *Mandatory service.* Every document filed with the Secretariat shall be served upon all parties to any proceedings, *i.e.*, Complaint Counsel, respondent(s), and party intervenors, as well as the Presiding Officer. Every document filed with the Secretariat or Presiding Officer shall also be served upon each participant, if the Presiding Officer or the Commission so directs.

(b) *Service of complaint, ruling, petition for interlocutory appeal, order, or decision.* A complaint, ruling, petition for interlocutory appeal, order, or decision shall be served as follows:

(1) *By electronic means.* Service may be made by electronic means if ordered by the Presiding Officer or otherwise agreed by the parties;

(2) *By registered mail, certified mail or commercial carrier.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his/her/its residence or principal office or place of business and sent by registered mail, certified mail, or commercial carrier;

(3) *By delivery to an individual or entity.* A copy of the document may be delivered to the person to be served; or to a member of the partnership or limited liability company to be served; or to the president, secretary, or other executive officer, or a director of the corporation or unincorporated association to be served; or to an agent authorized by appointment or by law to receive service; or

(4) *By delivery to an address.* If the document is not to be served electronically and cannot be served in person or by mail as provided in paragraph (b)(2) or (3) of this section, a copy of the document may be left at the

principal office or place of business of the person, partnership, corporation, unincorporated association, or authorized agent with an officer or a managing or general agent; or it may be left with a person of suitable age and discretion residing therein, at the residence of the person or of a member of the partnership or of an executive officer, director, or agent of the corporation or unincorporated association to be served; or

(5) *By publication in the **Federal Register***. A respondent that cannot be served by any of the methods already described in this section may be served by publication in the **Federal Register** and such other notice as may be directed by the Presiding Officer or the Commission, where a complaint has issued in a class action pursuant to § 1025.18.

(c) *Service of other documents.* Except as otherwise provided in paragraph (b) of this section, when service of a document starts the running of a prescribed period of time for the submission of a responsive document or the occurrence of an event, the document shall be served by electronic means unless otherwise ordered by the Presiding Officer or otherwise agreed by the parties.

(d) *Service on a representative.* When a party has appeared by an attorney or other representative, service upon that attorney or other representative shall constitute service upon the party.

(e) *Certificate of service.* Every document filed with the Commission and required to be served upon all parties to any proceedings, as well as participants if so directed by the Presiding Officer, shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party and participant to the proceedings. Certificates of service may be in substantially the following form:

I hereby certify that I have served the attached document upon all parties and participants of record in these proceedings by emailing, mailing postage prepaid, or delivering in person, a copy to each on ________.

____

(Signature)

For ______________________

(f) *Date of service.* The date of service of a document shall be the date on which the document is sent electronically, deposited with the United States Postal Service, postage prepaid, or is delivered in person.

§ 1025.17 [Amended]

■ 10. Amend § 1025.17 by:

■ a. Removing the words "these rules" in paragraph (a) introductory text and adding, in their place, the words "this part";

■ b. Removing the word "Secretary" in paragraphs (a) introductory text, (b) introductory text, and (c) and adding, in its place, the word "Secretariat";

■ c. Removing the words ", of these rules" in paragraph (b)(3); and

■ d. Removing the word "peititioner's" in paragraph (d)(5) and adding, in its place, the word "petitioner's" .

■ 11. Amend § 1025.18 by revising paragraphs (a)(1) and (f)(4) and removing the undesignated paragraph following paragraph (f)(4) to read as follows:

§ 1025.18 Class actions.

(a) * * *

(1) The class of respondents is so numerous or geographically dispersed that joinder of all members is impracticable;

* * * * *

(f) * * *

(4) Dealing with other procedural matters. The orders may be combined with a prehearing order under § 1025.21 and may be altered or amended as may be necessary.

* * * * *

■ 12. Revise § 1025.19 to read as follows:

§ 1025.19 Consolidation of proceedings.

(a) *Consolidation of actions.* When actions involving a common question of law or fact are pending before the Presiding Officer, the Commission or the Presiding Officer may order a consolidated hearing of any or all the matters in issue in the actions; the Commission or the Presiding Officer may order the actions consolidated for any purpose; and the Commission or the Presiding Officer may make such orders concerning such consolidated proceedings as needed to avoid unnecessary cost or delay.

(b) *Motions for consolidation.* A motion for consolidation may be filed by any party not later than thirty (30) days prior to the hearing. Such motion shall be served upon all parties to any proceedings in which consolidation is contemplated. The motion may include a request that the consolidated proceedings be maintained as a class action in accordance with § 1025.18. The proceedings may be consolidated to such extent and upon such terms as may be proper. Such consolidation may also be ordered upon the initiative of the Presiding Officer or the Commission. Single representatives may be designated by represented parties, intervenors, and participants with an identity of interests.

■ 13. Revise § 1025.21 to read as follows:

§ 1025.21 Prehearing conferences.

(a) *Preliminary meeting of the parties.* As early as practicable before the prehearing scheduling conference described in paragraph (b) of this section, but in no event later than five (5) days after the answer is due to be filed by the last answering respondent, counsel for the parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case. The parties shall also agree, if possible, on:

(1) A proposed discovery plan specifically addressing a schedule for depositions of fact witnesses, the production of documents and electronically stored information, and the timing of expert discovery. The parties' agreement regarding electronically stored information should include the scope of and a specified time period for the exchange of such information and the format for the discovery of such information;

(2) A preliminary estimate of the time required for the evidentiary hearing; and

(3) Any other matters to be determined at the prehearing conference.

(b) *Initial prehearing conference.* The Presiding Officer shall hold a prehearing conference not later than 50 days after publication of the complaint in the **Federal Register** and upon ten (10) days' notice to all parties and participants. At the prehearing conference any or all of the following shall be considered:

(1) The factual and legal theories of the parties;

(2) The current status of any pending motions or petitions;

(3) A proposed date for the evidentiary hearing, and a schedule of proceedings that is consistent with the date of the evidentiary hearing;

(4) Steps taken to preserve evidence relevant to the issues raised by the claims and defenses;

(5) The scope of anticipated discovery, any limitations on discovery, and a proposed discovery plan, including the disclosure of electronically stored information;

(6) Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial, and any request to bifurcate issues, claims or defenses; and

(7) Other possible agreements or steps that may aid in the just and expeditious disposition of the proceeding and to avoid unnecessary cost.

(c) *Public notice.* The Presiding Officer shall cause a notice of the first prehearing conference, including a statement of the issues, to be published in the **Federal Register** at least ten (10) days prior to the date scheduled for the conference.

(d) *Prehearing scheduling order.* Following the first prehearing conference, the Presiding Officer shall enter an order that sets forth the results of the conference and establishes a schedule of proceedings that will permit the evidentiary hearing to commence expeditiously, including a plan for discovery, and the production of documents and electronically stored information, dates for the submission and hearing of motions, the time and place of a final prehearing conference, and other matters as appropriate.

(e) *Additional conferences.* Additional prehearing conferences may be convened at the discretion of the Presiding Officer, upon notice to the parties, any participants, and to the public.

(f) *Final prehearing conference.* As close to the commencement of the evidentiary hearing as practicable, the Presiding Officer shall hold a final prehearing conference, at which time deadlines for proposed stipulations as to law, fact, or admissibility of evidence, and the exchange of exhibit and witness lists shall be established. At this conference, the Presiding Officer shall also resolve any outstanding evidentiary matters or pending motions (except motions for summary decision) and establish a final schedule for the evidentiary hearing.

(g) *Final prehearing order.* The Presiding Officer shall issue a final prehearing order in each case after the conclusion of the final prehearing conference. The final prehearing order should contain, to the fullest extent possible at that time, all information which is necessary for controlling the course of the hearing. The Presiding Officer may require the parties to submit a jointly proposed final prehearing order. If the complexities of the issues, extent of discovery, or good cause require that the hearing commence more than 300 days past the filing of the complaint, it shall be noted in the order.

(h) *Reporting.* Prehearing conferences shall be stenographically reported as provided in § 1025.47 and shall be open to the public (except as provided in § 1025.41(a)), unless otherwise ordered by the Presiding Officer or the Commission.

■ 14. Revise § 1025.22 introductory text to read as follows:

§ 1025.22 Prehearing briefs.

Not later than ten (10) days prior to the hearing, unless otherwise ordered by the Presiding Officer, the parties shall simultaneously serve and file prehearing briefs, which should set forth:

* * * * *

■ 15. Amend § 1025.23 by:

■ a. Removing the word "Secretary" from paragraph (b) and adding, in its place, the word "Secretariat"; and

■ b. Revising paragraphs (a) and (c).

The revisions read as follows:

§ 1025.23 Motions.

(a) *Presentation and disposition.* All motions, except disqualification motions filed under § 1025.42(e) and motions or applications related to subpoenas under § 1025.38(c), shall be addressed to the Presiding Officer, who shall rule upon them promptly, after affording an opportunity for response.

* * * * *

(c) *Responses and replies to motions.* Within fourteen (14) days after service of any written motion or petition or within such longer or shorter time as may be designated by this part or by the Presiding Officer or the Commission, any party who opposes the granting of the requested order, ruling or action may file a written response to the motion. Failure to respond to a written motion may, in the discretion of the Presiding Officer, be considered as consent to the granting of the relief sought in the motion. Replies to responses shall be filed within ten (10) days after service of the response. No additional replies or responses shall be permitted absent leave granted by the Presiding Officer or the Commission on good cause shown. Any additional replies or responses permitted by the Presiding Officer or the Commission shall be filed within five (5) days after service of the pleading to which the reply or response relates.

* * * * *

§ 1025.24 [Amended]

■ 16. Amend § 1025.24 by:

■ a. Adding the words "that is the subject of a proceeding under this part" at the end of paragraph (b)(1)(ii);

■ b. Removing the period at the end of paragraph (b)(1)(iv) and adding a semicolon in its place;

■ c. Adding paragraph (b)(1)(v); and

■ d. Revising the last sentence of paragraph (b)(2).

The addition and revision read as follows:

§ 1025.24 Interlocutory appeals.

* * * * *

(b) * * *

(1) * * *

(v) Grants or denies a motion under § 1025.13 unless the Commission has issued a decision under § 1025.13.

(2) * * * The Commission may decide the petition, or may request such further briefing or oral presentation as it deems necessary.

* * * * *

■ 17. Amend § 1025.25 by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 1025.25 Summary decisions and orders.

(a) *Motion.* Any party may file a motion, with a supporting memorandum, for a Summary Decision and Order in its favor upon all or any of the issues in controversy. The motion shall be accompanied by a separate and concise statement of the material facts as to which the moving party contends there is no dispute. Complaint Counsel may file such a motion at any time after thirty (30) days following issuance of a complaint, and any other party may file a motion at any time after issuance of a complaint. Any such motion by any party shall be filed in accordance with prehearing orders issued by the Presiding Officer under § 1025.21, and shall be filed no later than thirty (30) days after the close of discovery.

(b) *Response to motion.* Any other party may, within twenty (20) days after service of the motion, file a response with a supporting memorandum accompanied by a separate and concise statement of the material facts as to which the opposing party contends a genuine dispute exists.

(c) *Grounds.* A Summary Decision and Order shall be granted if the particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials show that there is no genuine issue as to any material fact and that the moving party is entitled to a Summary Decision and Order as a matter of law.

(d) *Legal effect.* A Summary Decision and Order upon all the issues being adjudicated shall constitute the Initial Decision of the Presiding Officer and may be appealed to the Commission in accordance with § 1025.53. A Summary Decision, interlocutory in character, may be rendered on fewer than all issues and may not be appealed prior to issuance of the Initial Decision.

* * * * *

■ 18. Revise § 1025.26 to read as follows:

§ 1025.26 Settlements.

(a) *Availability.* Any party shall have the opportunity to submit an offer of settlement to the Presiding Officer.

(b) *Form.* Offers of settlement shall be filed *in camera* in the form of a consent agreement and order, shall be signed by the respondent or respondent's representative, and may be signed by any other party. Each offer of settlement shall be accompanied by an *in camera* motion requesting that the Presiding Officer transmit the proposed consent agreement and order to the Commission. The motion shall outline the substantive provisions of the proposed consent agreement, and state reasons why the consent agreement should be accepted by the Commission. Offers of settlement and accompanying motions not jointly submitted shall be served simultaneously on Complaint Counsel.

(c) *Contents.* An offer of settlement shall contain:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps and of all rights to seek judicial review or otherwise to contest the validity of the Commission order;

(3) A statement that the allegations of the complaint are resolved by the consent agreement and order;

(4) A description of the alleged hazard, noncompliance, or violation;

(5) As appropriate, a listing of the acts or practices from which the respondent shall refrain and those acts or practices that the respondent shall affirmatively undertake; and

(6) As appropriate, a detailed statement of the corrective action(s) which the respondent shall undertake. In proceedings arising under Section 15 of the Consumer Product Safety Act, 15 U.S.C. 2064, this statement shall contain all the elements of a "Corrective Action Plan," as outlined in the Commission's Interpretation, Policy, and Procedure for Substantial Product Hazards, 16 CFR part 1115.

(d) *Transmittal.* The Presiding Officer shall transmit settlement offers that meet the requirements of paragraphs (b) and (c) of this section to the Commission for its consideration unless the Presiding Officer determines the settlement offer is clearly frivolous, duplicative of offers previously made, or contrary to established Commission policy. The Presiding Officer may, but need not, recommend acceptance of offers. Any party may object to the transmittal to the Commission of an offer of settlement by filing a response opposing the motion.

(e) *Stay of proceedings.* When an offer of settlement has been agreed to by all parties and has been transmitted to the Commission, the proceedings shall be stayed until the Commission has ruled on the offer of settlement. When an offer of settlement has been made and transmitted to the Commission but has not been agreed to by all parties, the proceedings shall not be stayed pending Commission decision on the offer, unless otherwise ordered by the Presiding Officer or the Commission.

(f) *Commission ruling.* The Commission shall rule upon all transmitted offers of settlement. If the Commission accepts the offer, the Commission shall issue an appropriate order, which shall become effective upon issuance.

(g) *Commission rejection.* If the Commission rejects an offer of settlement, the Secretariat shall give written notice of the Commission's decision to the parties and the Presiding Officer. If the proceedings have been stayed, the Presiding Officer shall promptly issue an order resuming the proceedings, with consideration to any modifications to the schedule necessitated by the stay.

(h) *Effect of rejected offer.* Neither rejected offers *of settlement,* nor the fact of the proposal of offers of settlement are admissible in evidence.

■ 19. Revise § 1025.31 to read as follows:

§ 1025.31 General provisions governing discovery.

(a) Unless otherwise provided by statute, the parties shall conduct discovery in accordance with and subject to Rule 26 of the Federal Rules, as specified in this part. Unless specified in paragraphs (a)(1) through (4) of this section or provided for in this part, the time frames set for all actions described in Rule 26 shall be set by the Presiding Officer.

(1) Initial disclosures of information required in Federal Rule 26(a)(1)(C) shall be produced no later than 5 days after the preliminary meeting of the parties as set forth in § 1025.21(a).

(2) Federal Rule 26(a)(2)(B) (Witnesses Who Must Provide a Written Report) shall not apply.

(3) Federal Rule 26(c) (Protective Orders) shall apply with the following exceptions: Motions for protective orders shall be made to and decided by the Presiding Officer; Federal Rule 26(c)(3) shall not apply.

(4) Federal Rule 26(f) (Conference of the Parties: Planning for Discovery) shall not apply. The conference of the parties and joint discovery planning required in Federal Rule 26(f) shall take place as set forth in § 1025.21, or as otherwise ordered by the Presiding Officer.

(b) *Completion of discovery.* All non-expert discovery shall be completed as soon as practical but in no case longer than one hundred fifty (150) days after issuance of a complaint, unless otherwise ordered by the Presiding Officer in exceptional circumstances and for good cause shown. All discovery demands shall be made and served by a date which affords the party from whom discovery is sought the full response period provided by this part. The Presiding Officer shall establish a time frame for the completion of expert discovery in accordance with § 1025.21.

■ 20. Revise § 1025.32 to read as follows:

§ 1025.32 Written interrogatories to parties.

This section shall be governed by Rule 33 of the Federal Rules.

■ 21. Revise § 1025.33 to read as follows:

§ 1025.33 Production of documents, electronically stored information, and tangible things; access for inspection and other purposes.

This section shall be governed by Rule 34 of the Federal Rules, with the following exception: Requests for subpoenas shall be governed by § 1025.38.

■ 22. Revise § 1025.34 to read as follows:

§ 1025.34 Requests for admission.

This section shall be governed by Rule 36 of the Federal Rules, except that Rule 37(a)(5) award of expenses shall not apply.

■ 23. Revise § 1025.35 to read as follows:

§ 1025.35 Depositions.

This section shall be governed by Rules 30–32 of the Federal Rules, with the following exceptions: Requests for subpoenas shall be governed by § 1025.38; and Federal Rule 37(a)(5) award of expenses shall not apply.

■ 24. Revise § 1025.36 to read as follows:

§ 1025.36 Motions to compel discovery.

If a party fails to respond to discovery, in whole or in part, the party seeking discovery may move within twenty (20) days for an order compelling an answer, or compelling inspection or production of documents, or otherwise compelling discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without action by the Presiding Officer. For purposes of this section, an evasive or incomplete response is to be treated as a failure to respond. When taking depositions, the discovering party shall continue the examination to the extent possible with respect to other areas of inquiry before moving to compel discovery.

§ 1025.37 [Amended]

■ 25. Amend § 1025.37(g) by removing the words "of these rules".

■ 26. Revise § 1025.38 to read as follows:

§ 1025.38 Subpoenas.

(a) *Availability.* A subpoena shall be addressed to any person not a party for the purpose of compelling attendance, testimony, and production of documents at a hearing or deposition, and may be addressed to any party for the same purposes.

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time, and place for compliance with its provisions; and shall be issued by order of the Commission and signed by the Secretariat or by the Presiding Officer. A subpoena *duces tecum* shall specify the books, papers, documents, or other materials or data-compilations to be produced.

(c) *How obtained*—(1) *Content of application.* An application for the issuance of a subpoena, stating reasons, shall be submitted to the Presiding Officer, who shall forward the application to the Commission.

(2) *Procedure for application.* The Commission shall rule upon the application for a subpoena *ex parte,* by issuing an order granting or denying the application.

(d) *Issuance of a subpoena.* The Commission shall issue a subpoena by authorizing the Secretariat or the Presiding Officer to sign and date the approved subpoena for transmittal to the applicant for service.

(e) *Service of a subpoena.* A subpoena issued by the Commission shall be served upon the addressee as provided in § 1025.16(b)(2) through (5) and upon all parties as provided in § 1025.16(b).

(f) *Return of service.* A person serving a subpoena shall promptly execute a return of service, stating the date, time, and manner of service upon the addressee. If service is effected by mail or commercial carrier, the signed return receipt or proof of delivery shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made.

(g) *Motion to quash or limit subpoena.* Within five (5) days after receipt of a subpoena, the person to whom it is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope. Any such motion shall be answered within five (5) days after service and shall be ruled on by the Commission as a time critical matter, in accordance with the Commission Decision Making Procedures. The order shall specify the date, if any, for compliance with the specifications of the subpoena.

(h) *Consequences of failure to comply.* In the event of failure by a person to comply with a subpoena, the Presiding Officer may take any of the actions enumerated in § 1025.37, or may order any other appropriate relief to compensate for the withheld testimony, documents, or other materials. If in the opinion of the Presiding Officer such relief is insufficient, the Presiding Officer shall certify to the Commission a request for judicial enforcement of the subpoena.

§ 1025.39 [Removed]

■ 27. Remove § 1025.39.

■ 28. Amend § 1025.41 by revising paragraphs (a) through (d) to read as follows:

§ 1025.41 General rules.

(a) *Public hearings.* All hearings conducted pursuant to this part shall be public unless otherwise ordered by the Commission or the Presiding Officer, except that Commissioners and their staffs shall not attend or view public hearings concerning matters that may become subject of review by the Commission as the appellate body.

(b) *Prompt completion.* Hearings shall proceed with all reasonable speed and, insofar as practicable with due regard to the convenience of the parties, shall be held at one location and continue without suspension until concluded, except in unusual circumstances or as otherwise provided in this part. The hearing shall be limited to no more than 210 hours; provided that the Presiding Officer, upon a showing of good cause, may extend the number of hours for the hearing.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the right to present evidence, to conduct such cross-examination as may be necessary for a full and complete disclosure of the facts, and to be heard by objection, motion, brief, and argument.

(d) *Rights of participants.* Every participant shall have the right to make a written or oral statement of position and to file proposed findings of fact, conclusions of law, and a post hearing brief, in accordance with § 1025.17(b).

* * * * *

■ 29. Amend § 1025.42 by:

■ a. Revising paragraphs (a)(3), (6), and (9), (b), (d), and (e)(2); and

■ b. In paragraph (e)(1), removing the word "Secretary" and adding, in its place, the word "Secretariat".

The revisions read as follows:

§ 1025.42 Powers and duties of Presiding Officer.

(a) * * *

(3) To rule upon offers of proof, and receive relevant, competent, and probative evidence;

* * * * *

(6) To consider and rule, orally or in writing, upon all procedural, evidentiary, and other motions and issues appropriate in adjudicative proceedings;

* * * * *

(9) To take any action authorized by this part or the provisions of title 5, United States Code, sections 551–559.

(b) *Exclusion of parties by Presiding Officer.* A Presiding Officer shall have the authority, for good cause stated on the record, to exclude from participation in any proceedings any party, participant, or representative who violates the requirements of § 1025.66. Any party, participant or representative so excluded may appeal to the Commission in accordance with the provisions of § 1025.24. If the representative of a party or participant is excluded, the hearing may be suspended for a reasonable time so that the party or participant may obtain another representative.

* * * * *

(d) *Interference.* In the performance of adjudicative functions, a Presiding Officer shall not be responsible to or subject to the supervision or direction of any Commissioner or any member of a Commissioner's staff or of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the Commission. All directions by the Commission to a Presiding Officer concerning any adjudicative proceedings shall appear on and be made a part of the record.

(e) * * *

(2) Whenever, for good and reasonable cause, any party considers the Presiding Officer to be disqualified to preside, or to continue to preside, in any adjudicative proceedings, that party may file with the Secretariat a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of

the motion and supporting affidavit(s) shall be served by the Secretariat on the Presiding Officer whose removal is sought. The Presiding Officer shall have ten (10) days to respond in writing to such motion. However, the motion shall not stay the proceedings unless otherwise ordered by the Presiding Officer or the Commission. If the Presiding Officer does not disqualify himself/herself and the matter is appealed, the Commission shall determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose and, in the event of disqualification, shall take appropriate action by assigning another Presiding Officer or requesting loan of another Administrative Law Judge through the U.S. Office of Personnel Management.

■ 30. Amend § 1025.43 by:

■ a. Revising paragraphs (a) and (d)(1)(i);

■ b. Removing paragraph (e); and

■ c. Redesignating paragraph (f) as paragraph (e).

The revisions read as follows:

§ 1025.43 Evidence.

(a) *Applicability of Federal Rules of Evidence.* Unless otherwise provided by statute or this part, the Federal Rules of Evidence shall apply to all proceedings held pursuant to this part. However, the Federal Rules of Evidence may be relaxed by the Presiding Officer if the ends of justice will be better served by so doing. Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this part. Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this part solely on that basis. For example, evidence that constitutes hearsay may be admitted in accordance with paragraph (c) of this section, if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair.

* * * * *

(d) * * *

(1) * * *

(i) Generally known within the jurisdiction of the Commission; or

* * * * *

■ 31. Revise § 1025.44 to read as follows:

§ 1025.44 Expert witnesses.

(a) *Definition.* A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(2) The testimony is based on sufficient facts or data;

(3) The testimony is the product of reliable principles and methods; and

(4) The expert has reliably applied the principles and methods to the facts of the case.

(b) *Method of presenting testimony of expert witness.* In lieu of oral testimony, the Presiding Officer may order that the direct testimony of an expert witness be in writing and be filed on the record and exchanged between the parties no later than ten (10) days preceding the commencement of the hearing. Such written testimony shall be incorporated into the record and shall constitute the direct testimony of that witness. Upon a showing of good cause, the party sponsoring the expert witness may be permitted to amplify any written direct testimony during the hearing.

(c) *Cross-examination and redirect examination of expert witness.* Cross-examination, redirect examination, and re-cross-examination of an expert witness shall proceed in due course based upon any written testimony and any oral testimony.

(d) *Failure to file or exchange written testimony.* Failure to file or exchange written testimony of expert witnesses if required by the Presiding Officer shall deprive the sponsoring party of the use of the expert witness and of the conclusions which that witness would have presented, unless the opposing parties consent or the Presiding Officer otherwise orders in unusual circumstances.

■ 32. Amend § 1025.45 by revising paragraphs (b) introductory text, (b)(2) and (3), (e), and (f) to read as follows:

§ 1025.45 *In camera* materials.

* * * * *

(b) *In camera treatment of documents and testimony.* The Presiding Officer or the Commission may for good cause shown and based on the record, order documents or testimony offered in evidence, whether admitted or rejected, to be received and preserved *in camera.* The order shall include:

* * * * *

(2) The reasons for granting *in camera* treatment; and

(3) The terms and conditions imposed by the Presiding Official, if any, limiting access to or use of the *in camera* material, including the length of time the documents or testimony will be held *in camera.*

* * * * *

(e) *Public release of in camera materials. In camera* materials constitute a part of the confidential records of the Commission and shall not be released to the public until the expiration of any order granting *in camera* treatment.

(f) *Reference to in camera materials.* In the submission of proposed findings, conclusions, briefs, or other documents, all parties shall refrain from disclosing specific details of *in camera* materials. However, such refraining shall not preclude general references to such materials. If parties consider the inclusion of specific details of *in camera* materials to be necessary, those references shall be incorporated into separate proposed findings, conclusions, briefs, or other documents marked "Confidential, Contains *In Camera* Material," which shall be filed *in camera* and become part of the *in camera* record. Documents filed *in camera* shall be served only on parties accorded access to the *in camera* materials by this part, the Presiding Officer, or the Commission.

■ 33. Revise § 1025.46 to read as follows:

§ 1025.46 Proposed findings, conclusions, and order.

Within a reasonable time after the closing of the record and receipt of the transcript, all parties shall file, and participants may file simultaneously unless otherwise ordered by the Presiding Officer, post-hearing briefs, including proposed findings of fact and conclusions of law, as well as a proposed order. The Presiding Officer shall establish a date certain for the filing of the briefs, which shall not exceed fifty (50) days after the closing of the record except in unusual circumstances. The briefs shall be in writing and shall be served upon all parties. The briefs of all parties shall contain adequate references to the record and authorities relied upon, but shall not exceed thirty (30) pages, excluding covers, indexes, table of contents, list of citations, and list of references. Replies, if permitted by the Presiding Officer, shall be filed within fifteen (15) days of the date for the filing of briefs unless otherwise established by the Presiding Officer.

■ 34. Amend § 1025.47 by revising paragraph (a) to read as follows:

§ 1025.47 Record.

(a) *Reporting and transcription.* Hearings shall be recorded and transcribed by a court reporter, under the supervision of the Presiding Officer. The original transcript shall be a part of the record of proceedings. Copies of transcripts are available from the reporter at a cost not to exceed the maximum rates fixed by contract between the Commission and the reporter. In accordance with Section 11 of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. section 11), copies of transcripts may be made by members of the public or by Commission personnel, when available, at the Secretariat at reproduction costs as provided in § 1025.49.

* * * * *

■ 35. Revise § 1025.48 to read as follows:

§ 1025.48 Official docket.

The official docket in any adjudicatory proceedings shall be maintained electronically by the Secretariat as set forth in § 1025.14 and shall be made available to the public.

■ 36. Amend § 1025.49 by revising paragraph (a) to read as follows:

§ 1025.49 Fees.

(a) *Fees for deponents and witnesses.* Any person compelled to appear in person in response to a subpoena or notice of deposition shall be paid the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with title 28, United States Code, section 1821. The fees and mileage referred to in this paragraph (a) shall be paid by the party at whose instance deponents or witnesses appear. The parties may by agreement modify this provision.

* * * * *

■ 37. Amend § 1025.51 by revising paragraphs (a), (c), and (d)(1) to read as follows:

§ 1025.51 Initial decision.

(a) *When filed.* The Presiding Officer shall endeavor to file an Initial Decision with the Commission within sixty (60) days after the closing of the record or the filing of post-hearing briefs, whichever is later.

* * * * *

(c) *By whom made.* The Initial Decision shall be made and filed by the Presiding Officer who presided over the hearing, unless otherwise ordered by the Commission due to the disqualification of the Presiding Officer pursuant to § 1025.42.

(d) * * *

(1) At any time prior to, or concomitant with, the filing of the Initial Decision, the Presiding Officer may reopen the proceedings for the reception of further evidence where the interests of justice so require.

* * * * *

§ 1025.52 [Amended]

■ 38. Amend § 1025.52 by removing the word "Secretary" and adding, in its place, the word "Secretariat".

■ 39. Amend § 1025.53 by revising paragraphs (a), (b) introductory text, (c), and (f) to read as follows:

§ 1025.53 Appeal from initial decision.

(a) *Notices of appeal.* Any party may appeal an Initial Decision to the Commission by serving a notice of appeal within ten (10) days after issuance of the Initial Decision.

(b) *Appeal brief.* An appeal is perfected by filing a brief within forty (40) days after service of the Initial Decision. The appeal brief must be served upon all parties. The brief shall not exceed thirty (30) pages, excluding covers, indexes, table of contents, list of citations, and list of references. The appeal brief shall contain, in the order indicated, the following:

* * * * *

(c) *Answering brief.* Within thirty (30) days after service of the appeal brief upon all parties, any party may file an answering brief, which shall contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto. Such brief shall present clearly the points of fact and law relied upon in support of the reasons the party has for each position urged, with specific page references to the record and legal or other materials relied upon. An answering brief shall be subject to the same page limit as the appeal brief.

* * * * *

(f) *Reply brief.* A reply brief shall be limited to rebuttal of matters presented in answering briefs, including matters raised in cross-appeals. A reply brief may be filed and served within fourteen (14) days after service of an answering brief and shall not exceed fifteen (15) pages, excluding covers, indexes, table of contents, list of citations, and list of references.

* * * * *

■ 40. Amend § 1025.55 by:

■ a. Removing the comma following the words "in addition" in paragraph (a); and

■ b. Revising paragraph (c).

The revision reads as follows:

§ 1025.55 Final decision on appeal or review.

* * * * *

(c) Except as otherwise ordered by the Commission, the Commission shall file its Decision within ninety (90) days after the filing of all briefs or after receipt of transcript of the oral argument, whichever is later.

§ 1025.56 [Amended]

■ 41. Amend § 1025.56 by:

■ a. Removing the word "sevice" and adding, in its place, the word "service"; and

■ b. Adding, in the last sentence, the word "Final" before the words "Decision or Order".

■ 42. Amend § 1025.57 by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b) to read as follows:

§ 1025.57 Effective date of order.

(a) *Orders in proceedings arising under the Consumer Product Safety Act.* An order of the Commission in adjudicative proceedings under this part becomes effective upon receipt by the respondent, unless otherwise ordered by the Commission.

* * * * *

■ 43. Amend § 1025.58 by:

■ a. Removing paragraph (b);

■ b. Redesignating paragraphs (c) through (f) as paragraphs (b) through (e); and

■ c. Revising newly redesignated paragraphs (b)(2) and (d)(2).

The revisions read as follows:

§ 1025.58 Reopening of proceedings.

* * * * *

(b) * * *

(2) *After effective date of order.* Whenever the Commission determines that changed conditions of fact or law or the public interest may require that a Commission decision or order be altered, modified, or set aside in whole or in part, the Commission shall serve upon all parties to the original proceedings an order to show cause, stating the changes the Commission proposes to make in the decision or order and the reasons such changes are deemed necessary. Within thirty (30) days after service of an order to show cause, any party to the original proceedings may file a response. Any party not responding to the order to show cause within the time allowed shall be considered to have consented to the proposed changes.

* * * * *

(d) * * *

(2) *Factual issues.* When the pleadings raise substantial factual issues, the Commission may direct the Presiding Officer to conduct such additional hearings as it deems appropriate. Upon conclusion of the hearings, and including the filing of post-hearing briefs containing proposed findings of fact and conclusions of law, as well as a proposed order, the Presiding Officer shall issue a Recommended Decision, including proposed findings and conclusions, and

the reasons therefor, as well as a proposed Commission order. If the Presiding Officer recommends that the Commission's original order be reopened, the proposed order shall include appropriate provisions for the alteration, modification or setting aside of the original order. The record and the Presiding Officer's Recommended Decision shall be certified to the Commission for final disposition of the matter.

* * * * *

■ 44. Revise § 1025.63 to read as follows:

§ 1025.63 Written appearances.

(a) *Filing.* Any person who appears in any proceedings shall file a written notice of appearance, stating for whom the appearance is made and the name, electronic address, mailing address, and telephone number of the person making the appearance and the date of the commencement of the appearance. The appearance shall be made a part of the record.

(b) *Withdrawal.* Any person who has previously appeared in any proceedings may withdraw his/her appearance by filing a written notice of withdrawal of appearance with the Secretariat. The notice of withdrawal of appearance shall state the name, electronic address, mailing address, and telephone number (including area code) of the person withdrawing the appearance, for whom the appearance was made, and the effective date of the withdrawal of the appearance. Such notice of withdrawal shall be filed within five (5) days of the effective date of the withdrawal of the appearance.

§ 1025.65 [Amended]

■ 45. Amend § 1025.65 by:

■ a. Removing the word "files" from paragraph (a) and adding, in its place, the word "provides"; and

■ b. Removing the word "Secretary" in paragraph (a) and adding, in its place, the word "Secretariat".

§ 1025.66 [Amended]

■ 46. Amend § 1025.66 by removing the words "of these rules" from paragraph (d).

■ 47. Amend § 1025.67 by:

■ a. Revising the section heading and paragraphs (a) and (b); and

■ b. Removing the word "Secretary" in paragraph (c) introductory text and adding, in its place, the word "Secretariat".

The revisions read as follows:

§ 1025.67 Restrictions as to former Commission members and employees.

(a) *Generally.* Except as otherwise provided in paragraph (b) of this section, the post-employment restrictions applicable to former Commission members and employees, including but not limited to those referenced at 16 CFR 1030.101, 5 CFR part 2641, 18 U.S.C. 207, and, as applicable, Executive Order 13490, shall govern the activities of former Commission members and employees in adjudicative matters connected with their former duties and responsibilities.

(b) *Participation as witness.* A former member or employee of the Commission may testify in any proceeding subject to this part concerning his/her participation in any Commission activity. This section does not constitute a waiver by the Commission of any objection provided by law to testimony that would disclose privileged or confidential material. The provisions of 18 U.S.C. 1905 prohibiting the disclosure of trade secrets also applies to testimony by former members and employees.

* * * * *

■ 48. Revise § 1025.68 to read as follows:

§ 1025.68 Prohibited *ex parte* communications.

(a) *Applicability.* This section is applicable during the period commencing with the date of issuance of a complaint and ending upon final Commission action in the matter.

(b) Except as set forth in paragraph (d) of this section, *ex parte* communications in any form that are relevant to the merits of any proceedings under this part are prohibited:

(1) By any interested person not employed by the Commission to any decision-maker; or

(2) By a decision maker to any interested person not employed by the Commission.

(c) *Definitions*—(1) *Decision-maker,* as used in this section, shall include: Those Commission personnel who render decisions in adjudicative proceedings under this part, or who advise officials who render such decisions, including:

(i) The Commissioners and their staffs;

(ii) The Administrative Law Judges and their staffs;

(iii) The General Counsel and his/her staff, unless otherwise designated by the General Counsel.

(2) *Ex parte communication.* Any communication concerning a matter that is the subject of proceedings under this part that is made by an interested person not employed by the Commission to a decision-maker or by a decision-maker to an interested person not employed by the Commission, which is:

(i) Written and not served on all parties; or

(ii) Oral and without advance notice to all parties to the proceedings and opportunity for them to be present.

(d) *Permissible ex parte communications.* The following communications shall not be prohibited under this section.

(1) *Ex parte* communications authorized by statute or by this part. (See, for example, § 1025.38 which governs applications for the issuance of subpoenas.)

(2) Any staff communication concerning judicial review or judicial enforcement in any matter pending before or decided by the Commission.

(3) Communications by any party to the Commission concerning a proposed settlement agreement that has been transmitted to the Commission.

(e) *Procedures for handling prohibited ex parte communication*—(1) *Prohibited written ex parte communication.* To the extent possible, a prohibited written *ex parte* communication received by any Commission employee or interested person not employed by the Commission shall be forwarded to the Secretariat or Presiding Officer, as appropriate. A prohibited written *ex parte* communication which reaches a decision-maker shall be forwarded by the decision-maker to the Secretariat or the Presiding Officer, as appropriate. If the circumstances in which a prohibited *ex parte* written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) *Prohibited oral ex parte communication.* (i) If a prohibited oral *ex parte* communication is made to a decision-maker or interested person not employed by the Commission, he/she shall advise the person making the communication that the communication is prohibited and shall terminate the discussion; and

(ii) The recipient of the communication shall forward to the Secretariat or the Presiding Officer, as appropriate, a signed and dated statement containing such of the following information as is known to him/her.

(A) The title and docket number of the proceedings;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties and/or participants to the proceedings;

(C) The date and time of the communication, its duration, and the circumstances (*e.g.*, telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed; and

(E) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) *Filing.* All communications and statements forwarded to the Secretariat or Presiding Officer under this section shall be placed in a public file which shall be associated with, but not made a part of, the record of the proceedings to which the communication or statement pertains.

(4) *Service on parties.* The Secretariat or the Presiding Officer, as appropriate, shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if the Secretary or Presiding Officer, as appropriate, determine that service of the communication or statement would be unduly burdensome, he/she, in lieu of service, may notify all parties in writing that the communication or statement has been made and filed and that it is available for inspection and copying.

(5) *Service on maker.* The Secretariat or the Presiding Officer, as appropriate, shall forward to the person who made the prohibited *ex parte* communication a copy of each communication or statement filed under this section.

(f) *Effect of ex parte communications.* No prohibited *ex parte* communication shall be considered as part of the record for decision unless introduced into evidence by a party to the proceedings.

(g) *Sanctions.* A person or party who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to sanctions including but not limited to exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication. A person, not a party to the proceeding, who makes or causes to be made an *ex parte* communication prohibited by paragraph (b) of this section shall be subject to all sanctions provided in this section if such person subsequently becomes a party to the proceeding.

Subpart H—Implementation of the Equal Access to Justice Act in Adjudicative Proceedings With the Commission

■ 49. The authority citation for part 1025, subpart H, is revised to read as follows:

Authority: 5 U.S.C. 504, 551 *et seq.*

■ 50. Add § 1025.69 to subpart H to read as follows:

§ 1025.69 Separation of functions.

An employee or agent engaged in the performance of investigative or prosecuting functions for the Commission in a case, other than a Commissioner, may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision, except as witness or counsel in public proceedings.

■ 51. Revise § 1025.70 to read as follows:

§ 1025.70 General provisions.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the EAJA" in this subpart), provides for the award of attorney fees and other expenses to eligible persons who are parties to certain adversary adjudicative proceedings before the Commission. Applications for such fees and expenses may be made according to the EAJA, as interpreted by the federal courts and guidance provided by the U.S. Department of Justice.

1025.71 and 1025.72 and Appendix I to Part 1025 [Removed]

■ 52. Remove §§ 1025.71 and 1025.72 and appendix I to part 1025.

Dated: April 5, 2016.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2016–08125 Filed 4–12–16; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133673–15]

RIN 1545–BN07

Deemed Distributions Under Section 305(c) of Stock and Rights to Acquire Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding deemed distributions of stock and rights to acquire stock. The proposed regulations would resolve ambiguities concerning the amount and timing of deemed distributions that are or result from adjustments to rights to acquire stock. The proposed regulations also would provide additional guidance to withholding agents regarding their current withholding and information reporting obligations under chapters 3 and 4 with respect to these deemed distributions. The proposed regulations would affect corporations issuing rights to acquire stock, their shareholders and holders of these rights, and withholding agents with respect to these deemed distributions.

DATES: Written or electronic comments and requests for a public hearing must be received by July 12, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–133673–15), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC, 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–133673–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, 20224 or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–133673–15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 305, Maurice M. LaBrie, (202) 317–5322; concerning the proposed regulations under sections 860G, 861, 1441, 1461, 1471, and 1473, Subin Seth, (202) 317–6942; concerning the proposed regulations under section 6045B, Pamela Lew, (202) 317–7053; concerning submission of comments, contact Regina Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

1. Overview

This document contains proposed regulations that amend 26 CFR part 1 under sections 305, 860G, 861, 1441, 1461, 1471, 1473, and 6045B of the Internal Revenue Code of 1986 (Code) concerning deemed distributions that are or result from adjustments to rights to acquire stock.

Final regulations under section 305 were published in the **Federal Register** on July 12, 1973 (TD 7281, 38 FR 18531), and amendments to those final regulations were published in the **Federal Register** on October 15, 1974 (TD 7329, 39 FR 36860), and in the **Federal Register** on December 21, 1995 (TD 8643, 60 FR 66134).

Final regulations under sections 1441 and 1461 were published in the **Federal**

Register on October 14, 1997 (TD 8734, 62 FR 53387), and the following amendments to those final regulations were published in the **Federal Register** on: December 31, 1998 (TD 8804, 63 FR 72187); December 30, 1999 (TD 8856, 64 FR 73412); May 22, 2000 (TD 8881, 65 FR 32186); August 1, 2006 (TD 9272, 71 FR 43366); July 14, 2008 (TD 9415, 73 FR 40172) (corrected on August 6, 2008 (73 FR 45612)); January 23, 2012 (TD 9572, 77 FR 3109); December 5, 2013 (TD 9648, 78 FR 73081); March 6, 2014 (TD 9658, 79 FR 12726) (corrected on July 1, 2014 (79 FR 37175)); and, September 18, 2015 (TD 9734, 80 FR 56866). Final regulations under sections 1471 and 1473 were published in the **Federal Register** on January 28, 2013 (TD 9610, 78 FR 5874) (corrected on September 10, 2013 (78 FR 55202)), and the amendments to those final regulations were published as temporary regulations in the **Federal Register** on March 6, 2014 (TD 9657, 79 FR 12812) (corrected on July 1, 2014 (79 FR 37175)).

Final regulations under section 6045B were published in the **Federal Register** on October 18, 2010 (TD 9504, 75 FR 64072), and amendments to those final regulations were published in the **Federal Register** on April 18, 2013 (TD 9616, 78 FR 23116).

2. Amount and Timing of Deemed Distributions Under Section 305(c)

A. Application of Section 305(b) and (c) Generally

Section 305 and the regulations thereunder apply to actual and deemed distributions by a corporation of its own stock and rights to acquire its own stock. Section 305(a) provides the general rule that the receipt of these distributions is not included in the gross income of the recipient; however, under section 305(b)(1) through (b)(5) certain actual and deemed distributions of stock and stock rights are treated as distributions of property to which section 301 applies. For example, under section 305(b)(2), if a distribution (or series of distributions) by a corporation has the result of a receipt of property by some shareholders and an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation, all the distributions are treated as distributions of property to which section 301 applies.

Section 305(c) authorizes the Secretary to prescribe regulations to treat changes in the conversion ratio of instruments convertible into stock and other events having similar effects as distributions to shareholders whose proportionate interests in the assets or earnings and profits of the corporation are increased by such events.

Under section 305(d)(1) and current § 1.305–1(d), for purposes of section 305 and the regulations thereunder, the term *stock* includes rights to acquire stock, and under section 305(d)(2), for purposes of section 305(b) and (c) and the regulations thereunder, the term *shareholder* includes a holder of rights to acquire stock. For purposes of this preamble:

The term *actual shareholder* means a holder of stock (not including rights to acquire stock).

The term *deemed shareholder* means a holder of a right to acquire stock.

The term *deemed distribution* means a transaction or event, other than an actual distribution of stock, money, or other property, that is a distribution under section 305(b) and (c).

The term *applicable adjustment* means an adjustment to a right to acquire stock, including an increase or reduction in conversion ratio, conversion price, option price, or number of shares the holder would receive upon conversion or exercise.

The term *right to acquire stock* means any right to acquire stock, whether pursuant to a convertible instrument (such as a debt instrument that is convertible into shares of stock), a warrant, subscription right, or stock right issued by the corporation that issued or will issue the underlying stock, or any other right to acquire stock of the corporation issuing such right (whether settled in stock or in cash).

Under current § 1.305–1(b)(1), when a distribution of stock (including a right to acquire stock) is a distribution of property to which sections 305(b) and 301 apply, the amount of the distribution is the fair market value, on the date of the distribution, of the stock or right to acquire stock that is distributed.

B. Application of Section 305(b) and (c) to Adjustments to Rights To Acquire Stock

A corporation may issue rights to acquire its stock in a number of forms, including warrants, subscription rights, options, convertible instruments that give the holder a right to convert the instruments into shares of stock in the issuing corporation, and similar instruments. In any of these forms, rights to acquire stock may provide for applicable adjustments that grant deemed shareholders economic benefits that correspond to distributions of stock, cash, or other property made to actual shareholders. Similarly, rights to acquire stock may provide for adjustments to prevent actual shareholders' interests from being diluted as a result of distributions of stock, cash, or other property to deemed shareholders (that is, holders of rights to acquire stock).

An applicable adjustment to a convertible instrument may consist of an increase in the number of shares of stock a holder would receive upon conversion. Similarly, an applicable adjustment to a warrant, subscription right, stock right, option, or similar right to acquire stock may consist of an increase in the number of shares the holder would receive upon exercise. In either situation, the applicable adjustment may have the effect of increasing the deemed shareholders' proportionate interests in the assets or earnings and profits of the corporation. If this increase has a result described in section 305(b), then under section 305(c) the applicable adjustment is a deemed distribution to the deemed shareholder, and section 301 applies to the deemed distribution.

Under current § 1.305–7(b)(1), an applicable adjustment made pursuant to a bona fide, reasonable adjustment formula that has the effect of preventing dilution of a shareholder's interest is not a deemed distribution of stock to which sections 305(b) and 301 apply. However, also under current § 1.305–7(b)(1), an applicable adjustment to compensate for a distribution of cash or property to actual shareholders that is taxable under section 301, 356(a)(2), 871(a)(1)(A), 881(a)(1), 852(b), or 857(b) is not considered as made pursuant to such a bona fide, reasonable adjustment formula, and therefore may be a distribution to which sections 305(b) and 301 apply.

The Treasury Department and the IRS have concluded that, under section 305(b) and (c) and the regulations thereunder, it is clear that an applicable adjustment is a deemed distribution to which section 301 applies, if: (i) The applicable adjustment increases the proportionate interest of an actual shareholder or a deemed shareholder in the corporation's assets or earnings and profits; (ii) such increase in proportionate interest has a result described in section 305(b); and (iii) the anti-dilution exception of § 1.305–7(b)(1) does not apply. For example, it has been the position of the Treasury Department and the IRS for over forty years that, under section 305(b) and (c) and the regulations thereunder, an increase in the conversion ratio of a convertible debt instrument may be treated as a deemed distribution to the deemed shareholder that holds the instrument, and, if so treated, section

301 applies to the deemed distribution. *See* Rev. Rul. 75–513 (1975–2 CB 114) (section 301 applied to deemed distribution where conversion ratio of convertible debentures increased due to payment of cash dividend to common shareholders); and Rev. Rul. 76–186 (1976–1 CB 86) (same; basis of the convertible debentures was increased by the value of the deemed distribution); *cf.* Rev. Rul. 77–37 (1977–1 CB 85) (no deemed distribution because anti-dilution exception of § 1.305–7(b) applied where distribution to actual shareholders was tax-free under section 355).

The current regulations are unclear, however, as to the amount of a deemed distribution to a deemed shareholder. The current regulations may reasonably be interpreted as providing either that such a deemed distribution is treated as a distribution of a right to acquire stock (the amount of which is the fair market value of the right), or that such a distribution is treated as a distribution of the actual stock to which the right relates (the amount of which is the fair market value of the stock). Accordingly, for deemed distributions to deemed shareholders occurring before final regulations are published, the IRS will not challenge either position.

The current regulations are also unclear as to the timing of such a distribution. Under the proposed regulations, such a distribution generally would be deemed to occur at the time the applicable adjustment occurs, in accordance with the instrument setting forth the terms of the right to acquire stock, but in no event later than the date of the distribution of cash or property that results in the deemed distribution (taking into account § 1.305–3(b)).

These proposed regulations would amend the current regulations under section 305(b) and (c) only to clarify the amount and timing of such deemed distributions, not the fact of their occurrence, which is clear under current law.

C. Summary of Proposed Regulations

i. Amount of Deemed Distributions

After studying this area, the Treasury Department and the IRS have concluded that a deemed distribution of a right to acquire stock is more accurately viewed as a distribution of additional rights to acquire stock, the amount of which is the fair market value of the right.

Under the terms of a convertible instrument, a distribution of cash or property to actual shareholders may increase the number of shares the holder of the convertible instrument would receive upon conversion. Similarly, a distribution of cash or property to actual shareholders may increase the number of shares the holder of other rights to acquire stock, such as warrants or options, would receive upon exercise. In either case, the increase is an applicable adjustment and a deemed distribution of additional rights to acquire stock to the holders of the rights to acquire stock. Under the proposed regulations, the amount of the deemed distribution would be the excess of (i) the fair market value of the right to acquire stock immediately after the applicable adjustment over (ii) the fair market value of the right to acquire stock without the applicable adjustment. In determining the fair market value of a right to acquire stock, any particular facts pertaining to the deemed shareholder's rights, including the number of actual shares of stock or rights to acquire stock held by such deemed shareholder, would be disregarded.

Also, under the terms of a convertible debt instrument or other right to acquire stock, a payment of cash or property to the holder may cause a reduction in the number of shares the holder would receive upon conversion or exercise. Such a reduction is an applicable adjustment that increases the actual shareholders' proportionate interests in the assets or earnings and profits of the corporation. Thus, the applicable adjustment results in a deemed distribution of stock to the actual shareholders, and section 301 applies to the deemed distribution. Under the proposed regulations, the amount of this deemed distribution would be the fair market value of the stock deemed distributed, determined in accordance with § 1.305–3(e), *Examples 8* and *9* (relating to deemed distributions to shareholders resulting from certain redemptions of stock from other shareholders). *See also* Tax Revenue Act of 1969: Hearings on H.R. 13270 Before the House Ways and Means Comm., 91st Cong. 1st Sess., pt. 14, 5196–98 (1969).

ii. Timing of Deemed Distributions

When an applicable adjustment is or results in a deemed distribution under proposed § 1.305–7(c)(1) or (2), the deemed distribution occurs at the time such applicable adjustment occurs, in accordance with the instrument setting forth the terms of the right to acquire stock, but in no event later than the date of the distribution of cash or property that results in the deemed distribution (taking into account § 1.305–3(b)). For such an applicable adjustment relating to a right to acquire publicly-traded stock, if the instrument setting forth the terms of such right does not set forth the date and time the applicable adjustment occurs, the deemed distribution would occur immediately prior to the opening of business on the ex-dividend date for the distribution of cash or property that results in the deemed distribution. For such an applicable adjustment relating to a right to acquire non-publicly traded stock, if the instrument setting forth the terms of such right does not set forth the date and time the applicable adjustment occurs, the deemed distribution occurs on the date that a holder is legally entitled to the distribution of cash or property that results in the deemed distribution.

3. Withholding Under Chapters 3 and 4 on Deemed Distributions Under Section 305(c)

This section provides a discussion of the proposed rules regarding deemed distributions under section 305(c). Section 4 of the preamble provides a discussion of the proposed rules regarding substitute dividend payments that are deemed payments determined with respect to a deemed distribution under section 305(c). The proposed rules that would apply for deemed payments are analogous to the proposed rules that would apply to deemed distributions.

A. Background

Sections 1441 and 1442 (referred to herein as "chapter 3") require all persons having the control, receipt, custody, disposal, or payment of items of income subject to withholding of any nonresident alien, foreign partnership, or foreign corporation to withhold tax at a 30-percent rate unless a reduced rate of withholding applies. Amounts subject to withholding include amounts from sources within the United States that are fixed or determinable annual or periodical income, which generally includes, among other things, interest, dividends, and similar types of investment income. § 1.1441–2(b)(1)(i). Under § 1.1441–2(e)(1), "a payment" is considered made to a person "if that person realizes income whether or not such income results from an actual transfer of cash or other property." For this purpose, a payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash basis method of accounting. § 1.1441–2(e)(1).

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Public Law 111–147 (H.R. 2847), added chapter 4 to the Code (sections 1471 through 1474, commonly known as "FATCA"). Chapter 4 generally requires a withholding agent to withhold tax at a 30-percent rate on a "withholdable payment" (as defined in § 1.1473–1(a)) made to a foreign financial institution (FFI) unless the FFI has entered into an agreement described in section 1471(b) to obtain status as a participating FFI or the FFI is deemed to have satisfied the requirements of section 1471(b). Chapter 4 also generally requires a withholding agent to withhold tax at a 30-percent rate on a withholdable payment made to a nonfinancial foreign entity (NFFE) unless the NFFE has provided information to the withholding agent with respect to the NFFE's substantial U.S. owners or has certified that it has no such owners. *See* section 1472.

These proposed regulations would provide guidance to withholding agents regarding their obligations to withhold under chapters 3 and 4 on deemed distributions under section 305(c). Withholding agents have commented that ambiguities in the current law have made it difficult for them to satisfy their withholding obligations. In particular, withholding agents have commented that these deemed distributions often occur when there is no cash payment that corresponds to the deemed distribution, which makes it difficult for them to satisfy their withholding obligation on the date of the deemed distribution. In addition, withholding agents commented that they often lack knowledge of the fact that a deemed distribution on a security has been made and are therefore unable to withhold on the date of the deemed distribution.

B. Amendments to Chapter 3

i. Withholding on Deemed Distributions, and New Exception for Deemed Distributions on Specified Securities

Proposed § 1.1441–2(d)(4)(i) would clarify that a withholding agent has an obligation to withhold on a deemed distribution (as defined in § 1.305–1(d)(7)) that is made on a security. Proposed § 1.1441–7(a)(4) would clarify that an issuer of a security upon which a deemed distribution is made and any person that holds directly or indirectly (for example, through an account maintained for an intermediary) a security on behalf of the beneficial owner of the security, or a flow-through entity that owns directly or indirectly (through another flow-through entity) a security, is considered to have custody of or control over the deemed distribution made on the security and, therefore, is a withholding agent with respect to the distribution.

Under current § 1.1441–2(d)(1), a withholding agent does not have an obligation to withhold on a payment when it lacks control over, or custody of, money or property of the recipient, or knowledge of the facts giving rise to the payment (the general exception). This general exception does not apply when, in relevant part, the payment is a distribution with respect to stock. The proposed regulations, however, would allow a withholding agent (other than the issuer of the specified security) to benefit from a new exception to withholding in proposed § 1.1441–2(d)(4) for deemed distributions (as defined in § 1.305–1(d)(7)) of stock or a right to acquire stock on a specified security (as defined in § 1.6045–1(a)(14)). Under this new exception, a withholding agent (other than the issuer of the specified security) would have an obligation to withhold on such a deemed distribution only if, before the due date (not including extensions) for filing Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, with respect to the calendar year in which the deemed distribution occurred, either (i) the issuer meets its reporting requirements under § 1.6045B–1 (by furnishing an issuer statement or publicly reporting the information required under that section) or (ii) the withholding agent has actual knowledge that a deemed distribution has occurred, in which case the obligation to withhold would not arise until January 15 of the year following the calendar year of the deemed distribution.

ii. When and How To Withhold

Once the requirements of proposed § 1.1441–2(d)(4)(i) have been satisfied, a withholding agent would have an obligation to withhold on a deemed distribution. Except as provided in § 1.1441–5 regarding the time to withhold for partnerships and trusts, under proposed § 1.1441–2(d)(4)(ii), a withholding agent would be required to satisfy its withholding obligation by withholding on the earliest of (i) the date on which a future cash payment is made with respect to the security; (ii) the date on which the security is sold, exchanged, or otherwise disposed of (including a transfer of the security to another account not maintained by the withholding agent or a termination of the account relationship); or (iii) the due date (not including extensions) for filing Form 1042 with respect to the calendar year in which the deemed distribution occurred. Under this approach, a withholding agent that continues to directly or indirectly hold or own the security when the requirements of proposed § 1.1441–2(d)(4)(i) are satisfied generally would be able to satisfy its withholding obligation by withholding on future cash payments on the security (for example, an interest payment on a convertible bond). If, however, the security is disposed of before sufficient future cash payments have been made on the security, the withholding agent would be required to withhold at the time of disposition and generally would be expected to do so by, for example, withholding on the proceeds from the disposal, liquidating other property held in custody for the beneficial owner, or obtaining other funds directly or indirectly from the beneficial owner to satisfy the withholding.

If there are not sufficient future cash payments on the security and the security has not been disposed of or transferred before the due date (not including extensions) for filing Form 1042 with respect to the calendar year in which the deemed distribution occurred, then, to avoid having to pay the tax out of the withholding agent's own funds, the withholding agent may apply current § 1.1461–2(b) in order to collect the underwithheld amount. Under these rules, the withholding agent can satisfy the tax by withholding on other cash payments made to the same beneficial owner or by liquidating other property held in custody for the beneficial owner or over which it has control. The proposed regulations would amend current § 1.1461–2(b) to clarify that a withholding agent may obtain the property from which to withhold under these rules through additional contributions obtained directly or indirectly from the beneficial owner. The proposed regulations also would add a sentence to current § 1.1461–2(b) to clarify that a withholding agent that satisfies its obligation to withhold under § 1.1461–2(b) will not be subject to any penalties for failure to deposit or failure to pay under sections 6656, 6672, and 7202 when it deposits the amounts obtained in this manner by the due date (not including extensions) for filing Form 1042 with respect to the calendar year in which the deemed distribution occurred. These clarifications reflect the IRS interpretation of current § 1.1461–2(b) in applying these penalties, and thus no penalties will be imposed for withholding agents that apply these rules to satisfy their obligations to withhold before the effective date of these regulations.

When the requirements of proposed § 1.1441–2(d)(4)(i) are satisfied after a withholding agent has terminated its relationship with the beneficial owner of the security, the withholding agent would remain liable for any underwithheld amount with respect to the deemed distribution. In order to avoid having to pay the tax due out of the withholding agent's own funds, before terminating an account relationship, a withholding agent should make arrangements with the beneficial owner to ensure that the withholding agent can satisfy any tax due, such as by retaining funds or other property of the owner.

iii. Foreign Entities Assuming Withholding Responsibilities

Proposed § 1.1441–2(d)(4)(iii) would provide that a withholding agent may treat certain foreign entities (qualified intermediaries, withholding foreign partnerships, withholding foreign trusts, and U.S. branches treated as U.S. persons) as assuming primary chapter 3 withholding responsibilities for a deemed distribution on a specified security only if (i) the withholding agent provides the foreign entity with a copy of the issuer statement described in § 1.6045B–1(b)(1) within 10 days of the issuer furnishing the statement to the holder of record or its nominee, or (ii) the issuer has met the public reporting requirements under § 1.6045B–1(a)(3). The foreign entity would have an obligation to withhold on the deemed distribution only if it receives a copy of the issuer statement or if the issuer has met the public reporting requirements by the due date (not including extensions) for filing Form 1042 with respect to the calendar year in which the deemed distribution occurred. A withholding agent that fails to provide a copy of the issuer statement to a foreign entity (in the absence of public reporting) would not be permitted to treat the foreign entity as having assumed primary withholding responsibilities for the deemed distribution and would therefore have to withhold and report based on the information that it has regarding the recipient of the deemed distribution. The purpose of this proposed rule is to ensure that foreign entities that assume primary withholding responsibilities for deemed distributions will possess the information described in § 1.6045B–1 to meet their withholding and information reporting obligations, as these entities (or their nominees) may not be holders of record that otherwise would receive the issuer statement described in § 1.6045B–1(b)(1).

iv. Reliance on Issuer Information Reporting

Under proposed § 1.1441–3(c)(5), a withholding agent (other than the issuer of the specified security) would be permitted to rely on the information that an issuer provides on an issuer statement described in § 1.6045B–1(b)(1) or on a public Web site described in § 1.6045B–1(a)(3) to determine the proper amount of withholding on a deemed distribution on a specified security unless it knows that the information is incorrect or unreliable. Additionally, a foreign entity that has assumed primary withholding responsibilities would be permitted to rely on the copy of the issuer statement described in § 1.6045B–1(b)(1) that it receives from another withholding agent under the circumstances described in proposed § 1.1441–2(d)(4)(iii) unless it knows that the information is incorrect or unreliable.

v. Other Changes to Current § 1.1441–2(d)(1)

The proposed regulations would add language to § 1.1441–2(d)(1) to clarify that a withholding agent does not lack control over money or property if it directs another person to make a payment, and that a withholding agent does not lack knowledge of the facts that give rise to a payment merely because the withholding agent does not know the character or source of the payment for U.S. tax purposes. The proposed regulations also would add an example to § 1.1441–2(d)(1) of when a withholding agent lacks knowledge of the facts that give rise to a payment. These clarifications and the example are consistent with similar rules in current § 1.1471–2(a)(4)(i) that apply for chapter 4 purposes.

The proposed regulations also would make nonsubstantive changes to reorganize the structure of current § 1.1441–2(d)(1).

C. Amendments to Chapter 4

The proposed regulations would modify the regulations under chapter 4 to provide guidance similar to the rules described in proposed §§ 1.1441–2(d)(1), 1.1441–2(d)(4), 1.1441–3(c)(5), and 1.1441–7(a)(4) for withholding on a deemed distribution (as defined in § 1.305–1(d)(7)) that is a withholdable payment under chapter 4. The amendment to proposed § 1.1461–2(b) that clarifies that a withholding agent may obtain additional contributions of property directly or indirectly from a beneficial owner and the new sentence added to proposed § 1.1461–2(b) regarding penalties also would apply to withholding agents adjusting underwithholding under chapter 4 through cross-reference in § 1.1474–2(b). The proposed regulations also would make nonsubstantive changes to reorganize the structure of current § 1.1471–2(a)(4)(i), which are consistent with the organizational changes proposed for current § 1.1441–2(d)(1).

4. A Substitute Dividend May Include Deemed Payments

Section 1.861–3(a)(6) provides that a substitute dividend payment made to a transferor in a securities lending transaction or sale-repurchase transaction is sourced in the same manner as a dividend on the transferred securities. The regulations define a substitute dividend payment as "a payment, made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction, of an amount equivalent to a dividend distribution which the owner of the transferred security is entitled to receive during the term of the transaction." These proposed regulations would modify § 1.861–3(a)(6) to clarify that a substitute dividend payment includes a deemed payment made in the amount (as determined under § 1.305–7(c)(4)) of a deemed distribution (as defined in § 1.305–1(d)(7)).

These proposed regulations would provide that the general exception to withholding in § 1.1441–2(d)(1)(i) does not apply for deemed payments (as defined in § 1.861–3(a)(6)). However, proposed § 1.1441–2(d)(4) would allow a withholding agent to benefit from the same exception to withholding that would apply to deemed distributions (as defined in § 1.305–1(d)(7)) on a specified security for deemed payments (as defined in § 1.861–3(a)(6)) that are determined with respect to a deemed distribution on a specified security. Thus, a withholding agent would have an obligation to withhold on such a deemed payment only if, before the due date (not including extensions) for filing Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, with respect to the calendar year in which the deemed distribution on a specified security occurred, either (i) the issuer meets its reporting requirements under § 1.6045B–1 (by furnishing an issuer statement or publicly reporting the information required under that section) or (ii) the withholding agent has actual knowledge that a deemed distribution has occurred, in which case the obligation to withhold would not arise until January 15 of the year following the calendar year of the deemed distribution or the deemed payment. If a withholding agent has an obligation to withhold on a deemed payment (as defined in § 1.861–3(a)(6)) under § 1.1441–2(d)(4)(i), it would be required to withhold subject to the rules regarding when and how to withhold in proposed § 1.1441–2(d)(4)(ii) and the rules regarding foreign entities that assume withholding responsibilities in § 1.1441–2(d)(4)(iii). These proposed regulations also would modify the regulations under chapter 4 to provide similar guidance with respect to deemed payments that are withholdable payments.

5. Issuer Reporting Under Section 6045B

To facilitate broker reporting of a security's adjusted basis to the holder of the security under section 6045, section 6045B provides that, according to the forms or regulations prescribed by the Secretary, an issuer of a specified security (for example, stock, a convertible debt instrument, or a warrant) must report certain information relating to an organizational action that affects the basis of the security to both the IRS and the holders of the security. Under section 6045B and current § 1.6045B–1, an issuer must file an issuer return (Form 8937, Report of Organizational Actions Affecting Basis of Securities) with the IRS by the earlier of 45 days after the organizational action or January 15 of the calendar year following the organizational action. In addition, the issuer must send a written statement (for example, a copy of the issuer return) to holders by January 15 of the calendar year following the organizational action. In lieu of filing the issuer return with the IRS and furnishing the written statement to holders, current § 1.6045B–1(a)(3) permits an issuer to post the required information on its public Web site by the due date for reporting the issuer return to the IRS. Under current § 1.6045B–1, however, an issuer is not required to send a statement to exempt recipients, such as C corporations and foreign persons, nor is an issuer required to file an issuer return if the issuer reasonably determines that all of the holders of the security are exempt recipients. An issuer must comply with current § 1.6045B–1 for an organizational action that occurs on or after the applicability date prescribed in current § 1.6045B–1(j). For example, an issuer of a convertible debt instrument must comply with current § 1.6045B–1 for an organizational action that occurs after December 31, 2015.

An applicable adjustment, including a conversion ratio adjustment, is an organizational action that often will affect the holder's basis in a specified security. For example, the instructions to Form 8937 provide that if a conversion ratio adjustment on a convertible debt instrument occurring after December 31, 2015, results in a distribution under section 305(c) (for example, because it is made in conjunction with a cash distribution to shareholders), the issuer of the debt instrument must file Form 8937.

Brokers and withholding agents have expressed concerns about the difficulty of complying with their reporting and withholding obligations in the absence of information about the fact and amount of a deemed distribution under section 305(c), including a deemed distribution under section 305(c) resulting from an applicable adjustment. Even after December 31, 2015, when issuers are generally required to report an applicable adjustment on a convertible debt instrument, brokers and withholding agents may not have the necessary information to comply with their reporting and withholding obligations because of the exempt recipient exception for providing a written statement (and assuming that the issuer does not choose the public reporting alternative). In response to these concerns, § 1.6045B–1(i)(2) of the proposed regulations would require that an issuer provide an issuer return to the IRS and a written statement to each holder of record of a specified security (or to the holder's nominee) relating to a deemed distribution under section 305(c) on the security, without regard to any of the general exceptions in the current regulations under section 6045B or in the instructions to Form 8937. The proposed regulations, like the current regulations, permit an issuer to not provide an issuer return to the IRS or a written statement to the holders regarding the deemed distribution if the issuer satisfies the public reporting requirements in current § 1.6045B–1(a)(3).

6. Reporting for U.S. Persons

Section 1.6045B–1 generally applies when a deemed distribution affects the basis of a specified security. It is expected that similar principles would apply under section 6042 with respect to reporting of deemed distributions made to U.S. persons on Form 1099–DIV. Comments are requested on the implementation of Form 1099–DIV reporting on these amounts.

Proposed Effective/Applicability Date

The proposed regulations under section 305 would apply to deemed distributions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A taxpayer, however, may rely on these proposed regulations for deemed distributions under section 305(c) that occur prior to such date. For purposes of determining the amount of a deemed distribution to a deemed shareholder occurring prior to the date of publication, a taxpayer may determine the amount of the deemed distribution by treating such distribution either as a distribution of a right to acquire stock or as a distribution of the actual stock to which the right relates.

The proposed regulations under sections 860G, 861, 1441, 1461, 1471, and 1473 would apply to payments made on or after the date of publication. A withholding agent, however, may rely on the proposed regulations under sections 861, 1441, 1471, and 1473 for all deemed distributions under section 305(c) or, to the extent applicable, deemed payments (as defined in § 1.861–3(a)(6)) occurring on or after January 1, 2016 until the date of publication. No inference as to the application of these provisions under current law is intended by permitting reliance on these proposed regulations. A withholding agent also may rely on the proposed regulations under section 1461 for any payments occurring on or after January 1, 2016 until the date of publication, including for any deemed distribution under section 305(c) or deemed payment (as defined in § 1.861–3(a)(6)) for which the withholding agent failed to withhold.

Section 1.6045B–1(i)(2) would apply to a deemed distribution under section 305(c) occurring on or after the date of publication. In addition, an issuer would report the amount and timing of a deemed distribution in accordance with the proposed regulations under section 305 for a deemed distribution occurring on or after the date of publication. For purposes of reporting the amount of a deemed distribution occurring prior to the date of publication, an issuer may determine the amount of the deemed distribution by treating such distribution either as a distribution of a right to acquire stock, or as a distribution of the shares of stock that would be received upon exercise of the right. In addition, an issuer may rely on § 1.305–7(c)(5) of the proposed regulations to determine the date of a deemed distribution occurring prior to the date of publication.

Statement of Availability of IRS Documents

IRS Revenue Rulings cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov.*

Effect on Other Documents

The IRS will modify, clarify, or obsolete publications as necessary to conform to these proposed regulations as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. *See, e.g.*, Rev. Rul. 75–513 (1975–2 CB 114) and Rev. Rul. 76–186 (1976–1 CB 186). The IRS solicits comments as to whether other publications should be modified, clarified, or obsoleted.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the proposed regulations under section 6045B in this document will not have a significant economic impact on a substantial number of small entities. Any effect on small entities by the rules in the proposed regulations flows directly from section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343 (122 Stat. 3765, 3854 (2008)) (the Act).

Section 403(d) of the Act added section 6045B, which requires an issuer, including an issuer that is a small entity, to report certain information relating to any organizational action by the issuer that affects the basis of a specified security. In general, an issuer reports the information required under section 6045B to the IRS and to holders or nominees on Form 8937. The proposed regulations limit reporting to the information necessary to meet the Act's requirements. In addition, the proposed regulations retain the rule in the current regulations under section 6045B that permits an issuer to report each action publicly on its Web site instead of filing a return and furnishing each holder or nominee a statement about the action. The proposed regulations therefore do not add to the statutory impact on small entities but instead eases this impact to the extent the statute permits. Moreover, any economic impact on small entities is expected to be minimal.

Therefore, because the proposed regulations in this document will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available for public inspection and copying upon request, or at *www.regulations.gov*. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are: With respect to the regulations under section 305, Maurice M. LaBrie of the Office of Associate Chief Counsel (Corporate); with respect to the regulations under sections 860G, 861, 1441, 1461, 1471, and 1473, Subin Seth of the Office of Associate Chief Counsel (International); and with respect to the regulations under section 6045B, Pamela Lew of the Office of Associate Chief Counsel (Financial Institutions and Products), all within the Office of Chief Counsel, IRS. Other personnel from the Treasury Department and the IRS participated in developing the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX REGULATIONS

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.305–1 is amended by:

■ 1. Revising paragraphs (b)(3) and (d).

■ 2. Adding paragraph (e).

The revisions and addition read as follows:

§ 1.305–1 Stock dividends.

* * * * *

(b) * * *

(3) For rules determining the amount of the distribution for certain transactions, such as periodic redemptions or applicable adjustments (as defined in § 1.305–7(a)) of rights to acquire stock that are treated as distributions under section 305(b) and (c), *see* § 1.305–7 and *Examples 6, 7, 8, 9,* and *15* of § 1.305–3(e).

* * * * *

(d) *Definitions.* For purposes of section 305, this section, and §§ 1.305–2 through 1.305–7:

(1) *Stock.* The term *stock* means actual stock or a right to acquire stock.

(2) *Actual stock.* The term *actual stock* means stock issued by a corporation, excluding rights to acquire stock as defined in paragraph (d)(3) of this section.

(3) *Right to acquire stock.* The term *right to acquire stock* means—

(i) A right of a holder of a convertible instrument (including a debt instrument that is convertible into shares of stock and stock that is convertible into shares of another class of stock) to convert the instrument into one or more shares of stock of the corporation issuing the instrument;

(ii) A warrant, subscription right, stock right, or other option to acquire shares of stock of the corporation issuing the instrument;

(iii) A right to acquire stock of the corporation issuing such right similar to the rights described in paragraphs (d)(3)(i) and (ii) of this section; and

(iv) A right to receive an amount of cash or other property determined in whole or in part by reference to the value of a specified number of shares of stock (whether or not in lieu of such stock) of the corporation issuing the right.

(4) *Shareholder.* The term *shareholder* means a holder of actual stock or a holder of a right to acquire stock.

(5) *Actual shareholder.* The term *actual shareholder* means a holder of actual stock.

(6) *Deemed shareholder.* The term *deemed shareholder* means a holder of a right to acquire stock.

(7) *Deemed distribution.* The term *deemed distribution* means a transaction or event, other than an actual distribution of cash or property, that constitutes a distribution under section 305(b) and (c). An applicable adjustment to a right to acquire stock is not and does not result in a deemed distribution if either—

(i) The right to acquire stock is a nonqualified stock option without a readily ascertainable fair market value (*see* section 83(e) and § 1.83–7), or

(ii) Section 83(a) applies to the right to acquire stock or the stock to which the right relates or the stock is subject to a substantial risk of forfeiture, and the holder of the right has not made an election under section 83(b).

(e) *Effective/applicability date.* Paragraphs (b)(3) and (d) of this section apply to deemed distributions under section 305(b) and (c) occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A taxpayer, however, may rely on these proposed regulations for deemed distributions under section 305(c) that occur prior to such date. For purposes of determining the amount of a deemed distribution to a deemed shareholder occurring prior to such date, a taxpayer may determine the amount of the deemed distribution by treating such distribution either as a distribution of a right to acquire stock or as a distribution of the actual stock to which the right relates.

■ **Par. 3.** Section 1.305–3 is amended by:

■ 1. Revising paragraph (e) introductory text,

■ *Example (6)*(ii),

■ *Example (7)*(ii) and (iii).

■ 2. Adding paragraph (f).

The revisions and addition read as follows:

§ 1.305–3 Disproportionate distributions.

* * * * *

(e) *Examples.* The following examples illustrate the application of section 305(b)(2) to distributions of stock and rights to acquire stock and the application of section 305(c) to deemed distributions of stock and rights to acquire stock. * * *

Example 6. * * *

(ii) M pays an annual cash dividend on the class A stock. At the beginning of the second year, when the conversion ratio is increased to 1.05 shares of class A stock for each share of class B stock, an applicable adjustment occurs, as defined in § 1.305–7(a), and a distribution of rights to acquire 0.05 shares of class A stock is deemed made under section 305(c) and § 1.305–7(c)(1) with respect to each share of class B stock. The proportionate interests of the class B shareholders in the assets or earnings and profits of M are increased, and the transaction has the effect described in section 305(b)(2). Accordingly, sections 305(b)(2) and 301 apply to the transaction. The amount of the deemed distribution is determined in accordance with § 1.305–7(c)(4)(ii), and the date and time of the deemed distribution are determined in accordance with § 1.305–7(c)(5).

Example 7. * * *

(ii) In 2017, a $1 cash dividend per share is declared and paid on the class B stock. Pursuant to the terms of the class B stock, on the date of payment, the conversion ratio of the class B stock is reduced. The reduction in conversion ratio is an applicable adjustment, as defined in § 1.305–7(a). Under section 305(c) and § 1.305–7(c)(2), the reduction is a deemed distribution of stock to the class A shareholders, since their proportionate interest in the assets or earnings and profits of the corporation is increased, and the transaction has the effect described in section 305(b)(2). Accordingly, sections 305(b)(2) and 301 apply to the transaction. The amount of the distribution is determined in accordance with § 1.305–7(c)(4)(ii), and the date and time of the deemed distribution are determined in accordance with § 1.305–7(c)(5).

(iii) In the following year a cash dividend is paid on the class A stock but not on the class B stock, and the conversion ratio of the class B stock increases. The increase in the conversion ratio of the class B shares is an applicable adjustment. Under section 305(c) and § 1.305–7(c)(1), the adjustment is a deemed distribution of rights to acquire stock to the class B shareholders since their proportionate interest in the assets or earnings and profits of the corporation is increased, and the transaction has the effect described in section 305(b)(2). Accordingly, sections 305(b)(2) and 301 apply to the transaction. The amount of the distribution is determined in accordance with § 1.305–7(c)(4)(i), and the date and time of the deemed distribution are determined in accordance with § 1.305–7(c)(5).

* * * * *

(f) *Effective/applicability date.* The first sentence of paragraph (e) of this section and *Examples 6* and *7* of paragraph (e) of this section apply to deemed distributions under section 305(c) occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A taxpayer, however, may rely on these proposed regulations for deemed distributions under section 305(c) that occur prior to such date. For purposes of determining the amount of a deemed distribution to a deemed shareholder occurring prior to the date of publication, a taxpayer may determine the amount of the deemed distribution by treating such distribution either as a distribution of a right to acquire stock or as a distribution of the actual stock to which the right relates.

■ **Par. 4.** Section 1.305–7 is revised to read as follows:

§ 1.305–7 Certain transactions treated as distributions.

(a) *Applicable adjustment.* For purposes of section 305, §§ 1.305–1 through 1.305–6, and this section, the term *applicable adjustment* means an adjustment to a right to acquire stock (as defined in § 1.305–1(d)(3)), including—

(1) With respect to a convertible instrument and a holder thereof, an increase in the conversion ratio or a reduction in the conversion price of such instrument;

(2) With respect to a warrant, subscription right, stock right, option, or other similar right and a holder thereof, an increase in the number of shares to be received by the holder upon exercise or a reduction in exercise price;

(3) With respect to a convertible instrument and a holder of actual stock into which such instrument may be converted, an increase in the conversion price or a reduction in the conversion ratio of such instrument;

(4) With respect to a warrant, subscription right, stock right, option, or similar right and a holder of actual stock into which such instrument is exercisable, an increase in the exercise price or a reduction in the number of shares to be received by the holder upon exercise; and

(5) An adjustment in the terms of a right to acquire stock having an effect similar to the effects of the adjustments described in paragraphs (a)(1) through (a)(4) of this section, including, for example, an extension or reduction of the term during which a right to acquire stock may be exercised.

(b) *Transactions treated as distributions*—(1) *In general.* Under section 305(c), an applicable adjustment, a change in redemption price, a difference between redemption price and issue price, a redemption that is treated as a distribution to which section 301 applies, or any transaction (including a recapitalization) having a similar effect on the interest of any shareholder is treated as a distribution of stock to which sections 305(b) and 301 apply if such transaction increases a shareholder's proportionate interest in the assets or earnings and profits of the corporation deemed to make such distribution, and the distribution has the result described in section 305(b)(2), (3), (4), or (5). Depending upon the facts presented, the distribution may be deemed to be made in shares of actual stock or in additional rights to acquire stock (which, in either case, may be common or preferred stock).

(c) *Applicable adjustment to right to acquire stock*—(1) *Increase in deemed shareholder's proportionate interest.* Under section 305(c), if an applicable adjustment has the effect of increasing a deemed shareholder's proportionate interest in the assets or earnings and profits of the corporation, and if such increase has the effect described in section 305(b)(2), (3), (4) or (5), the applicable adjustment is a deemed distribution to the deemed shareholder of a right to acquire stock, and section 301 applies to the deemed distribution. Applicable adjustments that can have this effect include, with respect to a convertible instrument, an increase in the conversion ratio or the number of shares of stock to be received upon conversion or a reduction in the conversion price.

(2) *Increase in actual shareholder's proportionate interest.* If an applicable adjustment has the effect of reducing a deemed shareholder's proportionate interest in the assets or earnings and profits of the corporation and thereby increasing an actual shareholder's proportionate interest, and if such increase has the effect described in section 305(b)(2), (3), (4), or (5), then the applicable adjustment is a deemed distribution of stock to the actual shareholder, and section 301 applies to the deemed distribution. Applicable adjustments that can have this effect include, with respect to a convertible instrument, a reduction in the conversion ratio or in the number of shares to be received upon conversion, or an increase in the conversion price.

(3) *Exception.* For purposes of applying section 305(c) in conjunction with section 305(b), an applicable adjustment that is made pursuant to a bona fide, reasonable adjustment formula (including but not limited to an applicable adjustment made to compensate for a distribution of stock to another shareholder) and that has the effect of preventing dilution of the proportionate interest of the holders of actual stock or rights to acquire stock does not result in a deemed distribution of stock. An applicable adjustment that is made to compensate for a cash or property distribution to another shareholder and that is taxable under section 301, 356(a)(2), 871(a)(1)(A), 881(a)(1), 852(b), or 857(b) is not made pursuant to a bona fide adjustment formula described in the preceding sentence.

(4) *Amount of deemed distribution*—(i) *Deemed distribution to deemed shareholder.* For a deemed distribution under section 305(b) and (c) that is made to a deemed shareholder and is an applicable adjustment, the amount of the deemed distribution is the excess of—

(A) The fair market value of the right to acquire stock held by the deemed shareholder immediately after the applicable adjustment, over

(B) The fair market value, determined immediately after the applicable adjustment, of such right to acquire stock as if no applicable adjustment had occurred.

(ii) *Deemed distribution to actual shareholder.* For a deemed distribution under section 305(b) and (c) that is made to an actual shareholder and results from an applicable adjustment, the amount of the deemed distribution is the fair market value of the stock deemed distributed, determined in accordance with the methodology set forth in § 1.305–3(e), *Examples 8* and *9.*

(iii) *Fair market value standard.* In determining the fair market value of a right to acquire stock for purposes of this paragraph (c)(4),

(A) Any particular facts pertaining to the deemed shareholder, including the number of rights or shares such deemed shareholder owns, will be disregarded, and

(B) Any value or reduction in value attributable to the possibility of future applicable adjustments that may result from actual or deemed distributions will not be taken into account.

(5) *Date and time of deemed distribution.* When an applicable adjustment is a deemed distribution under paragraphs (c)(1) or (2) of this section, the deemed distribution occurs at the time such applicable adjustment occurs, in accordance with the instrument setting forth the terms of the right to acquire stock, but in no event later than the date of the distribution of cash or property that results in the deemed distribution (taking into account § 1.305–3(b)). For such applicable adjustment relating to a right to acquire publicly-traded stock, if the instrument setting forth the terms of such right does not set forth the time the applicable adjustment occurs, the deemed distribution occurs immediately prior to the opening of business on the ex-dividend date for the distribution of the cash or property that results in the deemed distribution. For such an applicable adjustment relating to a right to acquire non-publicly traded stock, if the instrument setting forth the terms of such right does not set forth the time the applicable adjustment occurs, the deemed distribution occurs on the date that a holder is legally entitled to the distribution of cash or property that results in the deemed distribution.

(6) *Examples.* The following examples and the examples in §§ 1.305–3(e) and 1.305–5(d) illustrate the application of section 305(c) and paragraphs (a), (b) and (c) of this section.

Example 1. (i) *Facts.* Corporation U has two classes of actual stock outstanding, class A and class B. Each class B share is convertible into class A stock. In accordance with a bona fide, reasonable antidilution provision, the conversion price is adjusted downward if the corporation transfers class A stock to anyone for consideration below the conversion price. The corporation sells class A stock to the public at the current market price, which is below the conversion price. Pursuant to the antidilution provision, the conversion price is adjusted downward.

(ii) *Analysis.* Although such a reduction in conversion price is an applicable adjustment, under paragraph (c)(3) of this section the reduction is not a distribution under section 305(c) for the purposes of section 305(b).

Example 2. (i) *Facts.* Corporation X has outstanding one class of actual common stock and convertible debt securities. The convertible securities have a bona fide, reasonable antidilution provision that provides for an increase in conversion ratio in the event stock dividends or rights to acquire stock are distributed to the common shareholders. Corporation X distributes to the common shareholders an actual stock dividend that results in an increase in the conversion ratio of the convertible securities. Pursuant to the antidilution provision, the conversion ratio is increased.

(ii) *Analysis.* Under section 305(d) and § 1.305–1(d)(4), the holders of convertible securities are shareholders for purposes of section 305(b) and (c). The convertible securities are rights to acquire stock and are stock for purposes of section 305. The increase in conversion ratio caused by the distribution of the stock dividend to the common shareholders is an applicable adjustment. Because the applicable adjustment is made pursuant to a bona fide, reasonable adjustment formula within the meaning of paragraph (c)(3) of this section, the applicable adjustment is not a deemed distribution under section 305(c) of rights to acquire stock.

Example 3. (i) *Facts.* Corporation X has outstanding one class of publicly-traded common stock and convertible debt securities. The terms of the convertible securities provide for an increase in the conversion ratio in the event stock, cash, or property is distributed to the holders of the common stock. Corporation X distributes cash to the holders of the common stock, and the distribution results in an increase in the conversion ratio of the convertible securities.

(ii) *Analysis.* Under section 305(d) and § 1.305–1(d)(5), the holders of the convertible securities are shareholders for purposes of section 305(b) and (c). The conversion rights in the convertible securities are rights to acquire stock (as defined in § 1.305–1(d)(3)) and is stock for purposes of section 305. The increase in conversion ratio resulting from the cash distribution to the holders of common stock is an applicable adjustment. Because the applicable adjustment is not made pursuant to a bona fide, reasonable adjustment formula within the meaning of paragraph (c)(3) of this section, it is a deemed distribution to the holders of the convertible securities of rights to acquire stock under section 305(c) and paragraph (c)(1) of this section. Because the proportionate interests of these deemed shareholders in the assets or earnings and profits of Corporation X are increased by the change in conversion ratio, the distribution has the result described in section 305(b)(2) and is treated as a distribution to which section 301 applies. The amount of the deemed distribution is determined in accordance with paragraph (c)(4)(i) of this section, and the date and time of the deemed distribution are determined in accordance with paragraph (c)(5) of this section.

(d) *Recapitalizations*—(1) *In general.* A recapitalization (whether or not an isolated transaction) will be deemed to result in a distribution to which section 305(c) and this section apply if—

(i) It is pursuant to a plan to periodically increase a shareholder's proportionate interest in the assets or earnings and profits of the corporation, or

(ii) A shareholder owning preferred stock with dividends in arrears exchanges his stock for other stock and, as a result, increases his proportionate interest in the assets or earnings and profits of the corporation. An increase in a preferred shareholder's proportionate interest occurs in any case where the fair market value or the liquidation preference, whichever is greater, of the stock received in the exchange (determined immediately following the recapitalization), exceeds the issue price of the preferred stock surrendered.

(2) *Amount of distribution.* In a case to which paragraph (d)(1)(ii) of this section applies, the amount of the distribution deemed under section 305(c) to result from the recapitalization is the lesser of—

(i) The amount by which the fair market value or the liquidation preference, whichever is greater, of the stock received in the exchange (determined immediately following the recapitalization) exceeds the issue price of the preferred stock surrendered, or

(ii) The amount of the dividends in arrears.

(3) *Definition.* For purposes of applying paragraphs (d)(1) and (2) of this section with respect to stock issued before July 12, 1973, the term *issue price of the preferred stock surrendered* shall mean the greater of the issue price or the liquidation preference (not including dividends in arrears) of the stock surrendered.

(4) *Examples.* For an illustration of the application of this paragraph (d), *see Example 12* of § 1.305–3(e) and *Examples 1, 2, 3,* and *6* of § 1.305–5(d).

(e) *Redemption premiums with respect to preferred stock.* Under section 305(c), if a redemption premium exists with respect to a class of preferred stock under the circumstances described in § 1.305–5(b) and the other requirements of this section are met, the distribution will be deemed made with respect to such preferred stock, in stock of the same class. Accordingly, the preferred shareholders are considered under section 305(b)(4) and (c) to have received a deemed distribution of preferred stock to which section 301 applies.

(f) *Coordination with section 871(m).* For coordination of sections 305 and 871(m), *see* § 1.871–15(c)(2)(ii).

(g) *Effective date.* This section applies to deemed distributions under section 305(c) occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A taxpayer, however, may rely on these proposed regulations for deemed distributions under section 305(c) that occur prior to such date. For purposes of determining the amount of a deemed distribution to a deemed shareholder occurring prior to the date of publication, a taxpayer may determine the amount of the deemed distribution by treating such distribution either as a distribution of a right to acquire stock or as a distribution of the actual stock to which the right relates.

§ 1.860G–3 [Amended]

■ **Par. 5.** Section 1.860G–3(b)(1) is amended by removing the language "1.1441–2(d)(4)" in the last sentence, and adding the language "1.1441–2(d)(1)(ii)(C)" in its place, and by removing the language "1.1441–5(b)(2)(i)(A), and" and adding the language "1.1441–5(b)(2)(i)(A), 1.1471–2(a)(4)(i)(B)(*4*), and" in its place.

■ **Par. 6.** Section 1.861–3 is amended by:

■ 1. In paragraph (a)(6), removing "A substitute dividend payment is a payment" in the first sentence and adding "A substitute dividend payment is a payment or a deemed payment" in its place, and adding a new second sentence.

■ 2. In paragraph (d), replacing the third sentence with a new sentence.

The additions read as follows:

§ 1.861–3. Dividends.

(a) * * * * *

(6) *Substitute dividend payments.* * * * A deemed payment is a payment deemed to have been made in the amount (as determined under § 1.305–7(c)(4)) of a deemed distribution (as defined in § 1.305–1(d)(7)) that the owner of the transferred security is entitled to during the term of the transaction. * * *

* * * * *

(d) *Effective/applicability date.* * * * Paragraph (a)(6) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**; however, a taxpayer may rely on the rule in the second sentence of paragraph (a)(6) of this section for all deemed distributions (as defined in § 1.305–1(d)(7)) occurring on or after January 1, 2016, until the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * *

■ **Par. 7.** Section 1.1441–2 is amended by:

■ 1. Revising paragraphs (d)(1) and (4).

■ 2. Amending paragraph (f) by removing the language "(d)(4)" in the second sentence and adding in its place "(d)(1)(ii)(C)," and adding a fourth and fifth sentence.

The revisions and addition read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(d) * * *

(1) *General rule*—(i) *Control or custody and knowledge.* Except as provided in paragraph (d)(1)(ii) of this section, a withholding agent has an obligation to withhold under section 1441 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (d)) and the due date (including extensions) for filing Form 1042 with respect to the calendar year in which the payment occurs, it has—

(A) Control over, or custody of, money or property owned by the recipient or beneficial owner from which to withhold an amount; and

(B) Knowledge of the facts that give rise to the payment.

(ii) *Exception not available.* The exception from the obligation to withhold under paragraph (d)(1)(i) of this section does not apply if—

(A) The withholding agent is related (within the meaning of section 482) to the recipient or the beneficial owner of the payment;

(B) The payment is a distribution with respect to stock (including a deemed distribution (as defined in § 1.305–1(d)(7)) of stock or a right to acquire stock); *see,* however, paragraph (d)(4) of this section, which provides a limited exception from the obligation to withhold on a deemed distribution;

(C) The amounts are described in § 1.860G–3(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest);

(D) The lack of control over or custody of money or property from which to withhold is part of a pre-arranged plan known to the withholding agent to avoid withholding under section 1441, 1442, or 1443; or

(E) The payment is a deemed payment (as defined in § 1.861–3(a)(6)); *see,* however, paragraph (d)(4) of this section, which provides a limited exception from the obligation to withhold on a deemed payment.

(iii) *Documentation.* Any exception from withholding pursuant to paragraph (d)(1)(i) of this section applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under chapter 61 of the Code and backup withholding under section 3406.

(iv) *Scope of exception.* The exception from withholding under this paragraph (d) is not a determination that the amounts are not fixed or determinable annual or periodical income, nor is it an exception from reporting the amount under § 1.1461–1(b) and (c).

(v) *Lack of money or property or lack of knowledge.* A withholding agent does not lack control over money or property for purposes of this paragraph (d)(1) if the withholding agent directs another party to make the payment. Thus, for example, a principal does not cease to have control over a payment when it contracts with a paying agent to make the payments to its account holders in lieu of paying the account holders directly. Further, a withholding agent does not lack knowledge of the facts that give rise to a payment merely because the withholding agent does not know the character or source of the payment for U.S. tax purposes. *See* § 1.1441–3(d)(1) for rules addressing a withholding agent's obligations when the withholding agent has knowledge of the facts that give rise to the payment, but the character or source of the payment is not known.

(vi) Example. A, an individual, owns stock in DC, a domestic corporation, through a custodian, Bank 1. A also has a money market account at Bank 2. DC pays a dividend of $1,000 that is deposited in A's custodial account at Bank 1. A then directs Bank 1 to transfer $1,000 to A's money market account at Bank 2. With respect to the payment of the dividend into A's custodial account with Bank 1, both DC and Bank 1 are withholding agents making a payment of an amount subject to withholding for which they have custody, control, and knowledge. *See* §§ 1.1441–2(b)(1) and 1.1441–7(a)(1). Therefore, both DC and Bank 1 have an obligation to withhold on the payment unless they can reliably associate the payment with documentation sufficient to treat the respective payees as not subject to withholding under chapter 3. With respect to the wire transfer of $1,000 from A's account at Bank 1 to A's account at Bank 2, neither Bank 1 nor Bank 2 is required to withhold on the transfer because neither bank has knowledge of the facts that gave rise to the payment. Even though Bank 1 is a custodian for A's stock in DC and has knowledge regarding the $1,000 dividend paid to A, once Bank 1 credits the $1,000 dividend to A's account, the $1,000 becomes A's property. When A transfers the $1,000 to its account at Bank 2, this is a separate transfer about which Bank 1 has no knowledge regarding the type of payment made. Further, Bank 2 only has knowledge that it receives $1,000 to be credited to A's account but has no knowledge regarding the type of payment made. Accordingly, Bank 1 and Bank 2 have no withholding obligation with respect to the transfer from A's custodial account at Bank 1 to A's money market account at Bank 2.

* * * * *

(4) *Deemed distributions under section 305(c) and deemed payments*—(i) *General rule.* Subject to the rules in this paragraph (d)(4)(i) and paragraph (d)(4)(iii) of this section, and any other exception to withholding (for example, under § 1.1441–4), a withholding agent has an obligation to withhold on a deemed distribution (as defined in § 1.305–1(d)(7)) or a deemed payment (as defined in § 1.861–3(a)(6)) on a security. However, a withholding agent other than the issuer of a specified security (as defined in § 1.6045–1(a)(14)) has an obligation to withhold on a deemed distribution (as defined in § 1.305–1(d)(7)) on a specified security or a deemed payment (as defined in § 1.861–3(a)(6)) that is determined with respect to a deemed distribution on a specified security only if:

(A) The issuer of the specified security reports the information required under § 1.6045B–1 regarding the deemed distribution before the due date (not including extensions) for the withholding agent to file Form 1042 for the calendar year in which the deemed distribution or the deemed payment occurred; or

(B) The withholding agent has actual knowledge of the deemed distribution before the due date (not including extensions) for it to file Form 1042 for the calendar year in which the deemed distribution or the deemed payment occurred, but in such case the requirements of this paragraph (d)(4)(i) will not be considered to be met until January 15 of the year following the calendar year in which the deemed distribution or the deemed payment occurred.

(ii) *Time to withhold on a deemed distribution or deemed payment.* After the requirements of paragraph (d)(4)(i) of this section have been met, except as provided in § 1.1441–5 regarding the time to withhold for partnerships and trusts, a withholding agent must withhold on a deemed distribution (as defined in § 1.305–1(d)(7)) or a deemed payment (as defined in § 1.861–3(a)(6)) on the earliest of:

(A) The date on which a payment of cash is made with respect to the security or the securities lending or sales-repurchase transaction;

(B) The date on which the security is sold, exchanged, or otherwise disposed of (including a transfer of the security to a separate account not maintained by the withholding agent or a termination of the account relationship); or

(C) The due date (not including extensions) for the withholding agent to file Form 1042 for the calendar year in which the deemed distribution or the deemed payment occurred.

(iii) *Treatment of foreign entities assuming withholding responsibilities.* Notwithstanding § 1.1441–1(b)(1), a withholding agent may not treat a foreign entity as having assumed primary withholding responsibility under § 1.1441–1(e)(5), § 1.1441–1(b)(2)(iv), § 1.1441–5(c)(2)(i), or § 1.1441–5(e)(5)(v) for a deemed distribution (as defined in § 1.305–1(d)(7)) on a specified security (as defined in § 1.6045–1(a)(14)) or a deemed payment (as defined in § 1.861–3(a)(6)) that is determined with respect to a deemed distribution on a specified security unless the withholding agent has provided the foreign entity a copy of the issuer statement described in § 1.6045B–1(b)(1) within 10 days of the issuer furnishing the statement to the holder of record (or its nominee), or the issuer has met the public reporting requirements described in § 1.6045B–1(a)(3). A foreign entity described in the preceding sentence has an obligation to withhold on the deemed distribution or the deemed payment (unless an exception to withholding under section 1441 applies) if it receives a copy of the statement described in § 1.6045B–1(b)(1) or the issuer has met the public reporting requirements described in § 1.6045B–1(a)(3) by the due date (not including extensions) for filing Form 1042 with respect to the calendar year in which the deemed distribution or the deemed payment occurred. *See* § 1.1441–3(c)(5)(i) for when the foreign entity may rely on the copy of the issuer statement that it receives to determine the amount to withhold.

(iv) *Examples.* The following examples illustrate when a withholding agent must satisfy its obligation to withhold under paragraph (d)(4) of this section on a deemed distribution.

Example 1 (i) *Facts.* WA is a U.S. custodian that holds a convertible debt instrument (CDI) of Corporation X that is a specified security (as defined in § 1.6045–

1(a)(14)) on behalf of A, a foreign person. On March 1 of Year 1, there is a change in the conversion ratio of the CDI that is treated as a deemed distribution under § 1.305–7(b) and (c). On March 15 of Year 1, Corporation X makes an interest payment on the CDI to WA as custodian for A. On April 1 of Year 1, Corporation X reports the information required under § 1.6045B–1 regarding the deemed distribution on its public Web site. On April 15 of Year 1, Corporation X makes another interest payment on the CDI to WA as custodian for A.

(ii) *Analysis.* Under paragraph (d)(4)(i) of this section, WA does not have an obligation to withhold on the deemed distribution on the CDI that it holds on behalf of A until April 1 of Year 1, the date on which Corporation X satisfied its reporting requirements under § 1.6045B–1 regarding the deemed distribution. WA must withhold on the April 15 cash payment, which is the earliest of the dates specified in paragraph (d)(4)(ii) of this section for withholding on the deemed distribution.

Example 2 (i) *Facts.* The facts are the same as in Example 1, except that an interest payment is not made on the Corporation X CDI on April 15 of Year 1, and the CDI is transferred to a separate account of A that is not maintained by WA on April 15 of Year 1.

(ii) *Analysis.* Because WA is a withholding agent under § 1.1441–7(a)(4) with respect to the deemed distribution on March 1 of Year 1 and Corporation X reports the information required under § 1.6045B–1, WA is required to satisfy the withholding obligation even though the CDI was transferred before a cash payment is made with respect to the CDI. WA does not have an obligation to withhold on the deemed distribution until April 1 of Year 1, the date on which Corporation X reported the conversion ratio adjustment as required by § 1.6045B–1 regarding the deemed distribution. WA must withhold upon the transfer of the CDI to an account not maintained by WA on April 15 of Year 1, which is the earliest of the dates specified in paragraph (d)(4)(ii) of this section for withholding.

Example 3 (i) *Facts.* The facts are the same as in Example 2, except that the CDI is transferred to a separate account of A that is not maintained by WA on March 30 of Year 1.

(ii) *Analysis.* Because WA is a withholding agent under § 1.1441–7(a)(4) with respect to the deemed distribution on March 1 of Year 1 and Corporation X has satisfied its reporting requirements with respect to the deemed distribution, WA is required to satisfy the withholding obligation even though the CDI was transferred before WA received the issuer reporting from Corporation X under § 1.6045B–1 regarding the deemed distribution. WA does not have an obligation to withhold on the deemed distribution until April 1 of Year 1, the date on which Corporation X satisfied its reporting requirements under § 1.6045B–1 regarding the deemed distribution. Because neither of the events specified in paragraphs (d)(4)(ii)(A) and (B) of this section occurred after April 1 of Year 1, WA must satisfy its withholding obligation by the due date (not including extensions) for filing Form 1042 (that is, by March 15 of Year 2), as provided in paragraph (d)(4)(ii)(C) of this section. WA may apply § 1.1461–2(b) in order to collect the underwithheld amount.

* * * * *

(f) *Effective/applicability date.* * * * Paragraphs (d)(1) and (d)(4) of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A withholding agent may, however, rely on the rules in paragraphs (d)(1) and (d)(4) of this section for all deemed distributions (as defined in § 1.305–1(d)(7)) or deemed payments (as defined in § 1.861–3(a)(6)) occurring on or after January 1, 2016, until the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 8.** Section 1.1441–3 is amended by:

■ 1. Adding paragraph (c)(5).

■ 2. Amending paragraph (i) by removing the language "paragraphs (g) and (h)" and adding in its place "paragraphs (c)(5), (g), and (h)".

The addition reads as follows:

§ 1.1441–3 Determination of amounts to be withheld.

* * * * *

(c) * * *

(5) *Reliance rule for applicable adjustments*—(i) *In general.* For purposes of determining the amount of a deemed distribution (as defined in § 1.305–1(d)(7)) on a specified security (as defined in § 1.6045–1(a)(14)) or a deemed payment (as defined in § 1.861–3(a)(6)) that is determined with respect to a deemed distribution on a specified security, a withholding agent other than the issuer of the specified security (as defined in § 1.6045–1(a)(14)) may rely on the information provided by the issuer under § 1.6045B–1 (or a copy of the issuer statement in the circumstances described in § 1.1441–2(d)(4)(iii)) unless it knows that such information is incorrect or unreliable. *See* § 1.1441–2(d)(4) for a withholding agent's obligation to withhold on a deemed distribution or a deemed payment.

(ii) *Effective/applicability date.* Paragraph (c)(5)(i) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A withholding agent may, however, rely on the rules in paragraph (c)(5)(i) of this section for all deemed distributions (as defined in § 1.305–1(d)(7)) or deemed payments (as defined in § 1.861–3(a)(6)) occurring on or after January 1, 2016, until the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

■ **Par. 9.** Section 1.1441–7 is amended by:

■ 1. Redesignating paragraph (a)(4) as (a)(5) and adding a second and third sentence to newly redesignated (a)(5).

■ 2. Adding a new paragraph (a)(4).

■ 3. Amending paragraph (g) by removing the language "paragraphs (a)(4)" and adding in its place "paragraphs (a)(5)."

The addition reads as follows:

§ 1.1441–7 General provisions relating to withholding agents.

(a) * * *

(4) *Withholding agent with respect to deemed distributions under section 305(c).* Any person that issues or holds directly or indirectly (for example, through an account maintained for another intermediary) on behalf of a beneficial owner, or a flow through entity that owns directly or indirectly (through another flow-through entity), a security upon which a deemed distribution (as defined in § 1.305–1(d)(7)) is made has custody of or control over the deemed distribution. *See* § 1.1441–2(d)(4) for a withholding agent's obligation to withhold on the deemed distribution and § 1.1441–3(c)(5)(i) for when a withholding agent may rely on the information reported by the issuer under § 1.6045B–1 to determine the amount to withhold.

(5) * * * Paragraph (a)(4) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A withholding agent may, however, rely on the rules in paragraph (a)(4) of this section for all deemed distributions (as defined in § 1.305–1(d)(7)) occurring on or after January 1, 2016, until the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 10.** Section 1.1461–2 is amended by revising the second sentence to paragraph (b), adding a fourth sentence to paragraph (b), and adding a second and third sentence to paragraph (d) to read as follows:

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

* * * * *

(b) *Withholding of additional tax when underwithholding occurs.* * * * In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner, property over which it has control, or additional contributions of property obtained directly or indirectly from the beneficial owner. * * * A withholding agent that adjusts its underwithholding under the procedure described in this paragraph (b) will not be subject to any penalties or additions to tax described in § 1.1461–1(a)(2) if it timely deposits the amounts that it withholds from future payments, proceeds from the liquidation of property, or additional contributions of property obtained directly or indirectly from the beneficial owner. * * *

(d) * * * Paragraph (b) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A withholding agent may, however, rely on the rules in paragraph (b) of this section for payments occurring on or after January 1, 2016, until the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 11.** Section 1.1471–2 is amended by:

■ 1. Revising paragraph (a)(4)(i)(A), redesignating paragraph (B) as new paragraph (E), and adding new paragraphs (B) through (D).

■ 2. Amending paragraph (c) by adding a third and fourth sentence.

The revisions and addition read as follows:

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

* * * * *

(a) * * *

(4) * * *

(i) * * *

(A) *In general.* Except as provided in paragraph (a)(4)(i)(B) of this section, a withholding agent has an obligation to withhold under chapter 4 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (a)(4)(i)(A)) and the due date (including extensions) for filing Form 1042 (including extensions) with respect to the calendar year in which the payment occurs, it has—

(*1*) Control over, or custody of, money or property owned by the recipient or beneficial owner from which to withhold an amount, and

(*2*) Knowledge of the facts that give rise to the payment.

(B) *Exception not available.* The exception from the obligation to withhold under paragraph (a)(4)(i)(A) of this section does not apply if—

(*1*) The withholding agent is related (within the meaning of section 482) to the recipient or the beneficial owner of the payment;

(*2*) The payment is with respect to stock (including a deemed distribution (as defined in § 1.305–1(d)(7)) of stock or a right to acquire stock) or other securities; however, the limited exception from the obligation to withhold on a deemed distribution provided in § 1.1441–2(d)(4) also applies to a deemed distribution that is a withholdable payment under chapter 4;

(*3*) The lack of control over or custody of money or property from which to withhold is part of a pre-arranged plan known to the withholding agent to avoid withholding under section 1471 or 1472;

(*4*) The amounts are described in § 1.860G–3(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest);

(*5*) Any of the special rules described in § 1.1441–2(d)(2) or (3), regarding the obligation of a withholding agent with respect to cancellation of debt or the satisfaction of tax liability following underwithholding by a withholding agent, apply with respect to the payment (by applying such rules to payments that are withholdable payments under chapter 4); or

(*6*) The payment is a deemed payment (as defined in § 1.861–3(a)(6)); however, the limited exception from the obligation to withhold on a deemed payment provided in § 1.1441–2(d)(4) also applies to a deemed payment that is determined with respect to a deemed distribution on a specified security and that is a withholdable payment under chapter 4.

(C) *Documentation.* Any exception from withholding pursuant to paragraph (a)(4)(i)(A) of this section applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under chapter 61 of the Code and backup withholding under section 3406.

(D) *Lack of money or property or lack of knowledge.* A withholding agent does not lack control over money or property for purposes of this paragraph (a)(4)(i)(A) if the withholding agent directs another party to make the payment. Thus, for example, a principal does not cease to have control over a payment when it contracts with a paying agent to make the payments to its account holders in lieu of paying the account holders directly. Further, a withholding agent does not lack knowledge of the facts that give rise to a payment merely because the withholding agent does not know the character or source of the payment for U.S. tax purposes. *See* paragraph (a)(5) of this section for rules addressing a withholding agent's obligations when the withholding agent has knowledge of the facts that give rise to the payment, but the character or source of the payment is not known.

* * * * *

(c) * * * Paragraph (a)(4)(i) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A withholding agent may, however, rely on the rules in paragraph (a)(4)(i) of this section (together with the rules in § 1.1441–2(d)(4)), for all deemed distributions (as defined in § 1.305–1(d)(7)) or deemed payments (as defined in § 1.861–3(a)(6)) that are withholdable payments occurring on or after January 1, 2016, until the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 12.** Section 1.1473–1 is amended by:

■ 1. Amending paragraph (a)(2)(vii)(A) by adding a sentence to the end of the paragraph.

■ 2. Adding paragraph (d)(7).

■ 3. Amending paragraph (f) by adding a third and fourth sentence.

The additions read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) * * *

(2) * * *

(vii) * * *

(A) * * * For purposes of determining the amount of a deemed distribution (as defined in § 1.305–1(d)(7)) on a specified security (as defined in § 1.6045–1(a)(14)) or a deemed payment (as defined in § 1.861–3(a)(6)) that is determined with respect to a deemed distribution on a specified security, a withholding agent other than the issuer of the specified security may rely on issuer reporting by applying the rule under § 1.1441–3(c)(5)(i) to deemed distributions or deemed payments that are withholdable payments under chapter 4.

* * * * *

(d) * * *

(7) *Withholding agent with respect to deemed distributions under section 305(c).* Any person that issues or holds directly or indirectly (for example, through an account maintained for another intermediary) on behalf of a beneficial owner or a flow through entity that owns directly or indirectly (through another flow-through entity), a security upon which a deemed distribution (as defined in § 1.305–

1(d)(7)) is made has custody of or control over the deemed distribution.

* * * * *

(f) * * * Paragraphs (a)(2)(vii) and (d)(7) of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A withholding agent may, however, rely on the rules in paragraphs (a)(2)(vii) and (d)(7) of this section for all deemed distributions (as defined in § 1.305–1(d)(7)) or deemed payments (as defined in § 1.861–3(a)(6)) that are withholdable payments occurring on or after January 1, 2016, until the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 13.** Section 1.6045B–1 is amended by adding paragraph (i) to read as follows:

§ 1.6045B–1 Returns relating to actions affecting basis of securities.

* * * * *

(i) *Deemed distribution under section 305(c)*—(1) *In general.* This paragraph (i) provides special rules for an organizational action resulting in a deemed distribution under section 305(c) that affects the basis of a specified security, including a deemed distribution resulting from an applicable adjustment (for example, a conversion ratio adjustment). *See* paragraph (j) of this section to determine when this section applies to an organizational action that affects the basis of a specified security. For example, under paragraph (j)(4) of this section, this section applies to a deemed distribution under section 305(c) resulting from an applicable adjustment to a convertible debt instrument if the deemed distribution occurs on or after January 1, 2016, and the deemed distribution could affect the basis of the convertible debt instrument.

(2) *Mandatory reporting.* Notwithstanding any other provision in this section (including the reporting exceptions for exempt recipients in paragraphs (a)(4) and (b)(5) of this section), for an organizational action described in paragraph (i)(1) of this section the issuer must file an issuer return in accordance with paragraphs (a)(1) and (2) of this section and issuer statements in accordance with paragraphs (b)(1), (2), and (3) of this section. However, the requirement to file an issuer return and issuer statement in accordance with the preceding sentence does not apply if the issuer satisfies the public reporting requirements of paragraph (a)(3) of this section.

(3) *Information required to be reported.* For purposes of paragraph (i)(2) of this section, an issuer must provide the information required under paragraph (a)(1) of this section, including—

(i) The date of the deemed distribution under section 305(c) as determined in accordance with § 1.305–7(c)(5) (pursuant to paragraph (a)(1)(iv) of this section); and

(ii) The amount of the deemed distribution under section 305(c) as determined in accordance with § 1.305–7(c)(4) (pursuant to paragraph (a)(1)(v) of this section).

(4) *Effective/applicability date.* Paragraph (i)(2) of this section applies to a deemed distribution under section 305(c) occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For purposes of paragraphs (a)(1)(v) and (i)(3)(ii) of this section, an issuer must determine the amount of a deemed distribution under section 305(c) in accordance with § 1.305–7(c)(4) for a deemed distribution occurring on or after the date of publication. For purposes of reporting the amount of a deemed distribution occurring prior to the date of publication, an issuer may determine the amount of the deemed distribution by treating such distribution either as a distribution of a right to acquire stock in accordance with § 1.305–7(c)(4), or as a distribution of the shares of stock that would be received upon exercise of the right. For purposes of paragraphs (a)(1)(iv) and (i)(3)(i) of this section, an issuer must determine the date of a deemed distribution under section 305(c) occurring on or after the date of publication in accordance with § 1.305–7(c)(5). An issuer, however, may rely on § 1.305–7(c)(5) to determine the date of a deemed distribution that occurs prior to the date of publication.

* * * * *

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–08248 Filed 4–12–16; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2016–OSERS–0022; CFDA Number: 84.421B.]

Proposed Priorities, Requirements, and Definitions—Disability Innovation Fund—Transition Work-Based Learning Model Demonstrations

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities, requirements, and definitions under the Disability Innovation Fund (DIF) Program. The Assistant Secretary may use these priorities, requirements, and definitions for competitions in fiscal year (FY) 2016 and later years. The Assistant Secretary takes this action to identify, develop, implement, and evaluate effective work-based learning models that will help students with disabilities prepare for postsecondary education and competitive integrated employment. The models must be delivered through a coordinated system of transition services.

DATES: We must receive your comments on or before May 13, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or by postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the "Help" tab.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to RoseAnn Ashby, U.S. Department of Education, 400 Maryland Avenue SW., Room 5057, Potomac Center Plaza (PCP), Washington, DC 20202–5076.

Privacy Note: The U.S. Department of Education's (Department) policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: RoseAnn Ashby, telephone: (202) 245–7258, or by email: *roseann.ashby@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, and definitions, we urge you to identify clearly the specific section of the proposed priority, requirement, or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing *www.regulations.gov.* You may also inspect the comments in person in room 5057, 550 12th Street SW., PCP, Washington, DC 20202–5076, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the DIF Program, as provided by the Consolidated Appropriations Act, 2015 (Pub. L. 113–235), is to support innovative activities aimed at improving the outcomes of "individuals with disabilities," as defined in section 7(20)(A) of the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 705(20)(A)).

Program Authority: Consolidated Appropriations Act, 2015 (Pub. L. 113–235).

PROPOSED PRIORITIES: This document contains three proposed priorities.

Background:

Despite emphasis on providing transition services under the Individuals with Disabilities Education Act (IDEA) and Rehabilitation Act, students with disabilities continue to face challenges as they transition from school to post-school activities, including postsecondary education and competitive integrated employment. These students often have lower high school graduation rates, lower postsecondary enrollment rates, and higher unemployment rates than their peers without disabilities (Leucking & Leucking, 2015).

To address these concerns, the Workforce Innovation and Opportunity Act of 2014 (WIOA) strengthened the emphasis on providing services and supports to students and other youth with disabilities to achieve competitive integrated employment. For example, the Rehabilitation Act, as amended by WIOA, not only expands the population of students with disabilities who may receive services but also broadens the scope of services and supports that State vocational rehabilitation (VR) agencies may provide to students with disabilities who are transitioning from secondary school to postsecondary education and employment.

In particular, new section 113 of the Rehabilitation Act requires that pre-employment transition services, including work-based learning experiences, job exploration counseling, workplace readiness training, counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education, and instruction in self-advocacy, be made available to students with disabilities who are eligible or potentially eligible for services under the State VR services program. To ensure that pre-employment transition services improve outcomes for students with disabilities, State VR agencies will require models of effective interventions that can be tailored to meet the diverse needs of these students across the Nation.

The body of literature on transition services identifies work-based learning as a key component in improving outcomes for youth with disabilities. Work-based learning links knowledge gained through work with classroom or related instruction. Work-based learning experiences range in intensity, structure, and scope, and consist of a diverse set of activities such as site visits, job shadowing, paid and unpaid internships, and apprenticeships. Under section 113 of the Rehabilitation Act, work-based learning experiences provided to students with disabilities through the State VR services program may include in-school or after-school opportunities or experiences outside the traditional school setting, such as internships, that are provided in an integrated environment to the maximum extent possible.

Research has shown a strong relationship between work experiences during secondary school, particularly paid employment, and post-school employment for youth with disabilities. These experiences provide exposure to a range of career options that are otherwise typically limited for youth with disabilities. Work-based learning has long been shown to improve students' self-esteem, to teach and reinforce basic academic and technical skills, to promote an understanding of workplace culture and expectations, and to develop a network for future jobs searches (Luecking, 2009).

According to the National Collaborative on Workforce and Disability for Youth, quality work-based learning experiences are structured, appropriate to the age and stage of life of the individual, provide exposure to a wide range of work sites, and involve youth in choosing their experiences.

The Department therefore believes that providing effective work-based learning experiences in integrated settings, with coordination among State VR agencies, State and local educational agencies, and other key partners, can improve post-school outcomes for students with disabilities. However, additional evidence is needed to identify and develop interventions and strategies that provide effective work-based learning experiences in integrated settings and the conditions and circumstances under which interventions are most effective in improving competitive integrated employment outcomes for students with disabilities, especially the coordination of efforts with key partners that are necessary for the success of such interventions.

Through the DIF Program, the Department has the opportunity to award cooperative agreements to identify and demonstrate work-based learning interventions for students with disabilities that are supported by evidence and will be rigorously evaluated. We believe that the best evidence will come from model demonstrations carried out at the local level by State VR agencies in coordination with State and local educational agencies and other local partners. The priorities, requirements, and definitions proposed in this notice will better enable the Department to direct funds to interventions that address the significant challenges in improving the post-school outcomes of students with disabilities.

References:

Luecking, D.M., & Luecking, R.G. (2015). Translating Research into a Seamless Transition Model. Career Development and Transition for Exceptional Individuals, 38(1), 4–13.

Luecking, R.G. (2009). The Way to Work: How to Facilitate Work Experiences for Youth in Transition. Baltimore, MD: Paul H. Brookes Pub.

National Collaborative on Workforce and Disability for Youth (NCWD/Youth). Work-Based Learning Jump Start. Available at: *www.ncwd-youth.info/work-based-learning.*

Proposed Priority 1: Transition Work-Based Learning Model Demonstrations.

We give priority to model demonstration projects designed to identify, develop, implement, and evaluate effective work-based learning models that will help ensure that students with disabilities (as defined in this notice) are prepared for postsecondary education and competitive integrated employment (as defined in this notice). The model demonstration projects must provide effective work-based learning experiences in integrated settings, in coordination with other transition services, including pre-employment transition services (as defined in this notice), to students with disabilities, through State VR agencies, in collaboration with local educational agencies (LEAs) or, where appropriate, State educational agencies (SEAs) and other local partners.

Proposed Priority 2: Evidence of Promise Supporting the Proposed Model.

We give priority to projects supported by evidence of promise (as defined in this notice).

Proposed Priority 3: Evaluation of Project that Meets the What Works Clearinghouse Evidence Standards with Reservations.

We give priority to projects that conduct evaluations that meet the What Works Clearinghouse Evidence Standards (as defined in this notice) with reservations.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)), or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements: The Assistant Secretary proposes the following project requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect. Each of the following sets of requirements corresponds to one of the proposed priorities.

Proposed Requirements for Priority 1:

To be considered for funding under Proposed Priority 1, applicants must describe their plans to carry out the following project requirements—

(a) Develop and implement a project design that is supported by strong theory (as defined in this notice) that supports the effectiveness (*e.g.,* evidence base) of the proposed model, its components, and the processes to improve the postsecondary education and competitive integrated employment outcomes of students with disabilities;

(b) Develop and implement a project demonstrating effective practices and strategies in the use of work-based learning experiences in integrated settings to prepare students with disabilities for postsecondary education and competitive integrated employment. The model must be implemented at multiple local sites to ensure its replicability;

(c) Establish partnerships with the LEA or, as appropriate, the SEA, institutions of higher education, employers, and providers or other agencies that are critical to the development of work-based learning experiences in integrated settings for students with disabilities. At a minimum, the partnership must include representatives from the LEA, workforce training providers (*e.g.,* American Job Centers), and employers who will collaborate to develop and provide opportunities (such as internships, short-term employment, and apprenticeships) for students with disabilities served under the project;

(d) Provide career exploration and counseling to assist students in identifying possible career pathways (as defined in this notice) and the relevant work-based learning experiences;

(e) Develop work-based learning experiences in integrated settings, at least one of which must be a paid experience, that—

(1) Provide exposure to a wide range of work sites to help students make informed choices about career selections;

(2) Are appropriate for the age and stage in life of each participating student, ranging from site visits and tours, job shadowing, service learning, apprenticeships, and internships;

(3) Are structured and linked to classroom or related instruction;

(4) Use a trained mentor to help structure the learning at the worksite;

(5) Include periodic assessment and feedback as part of each experience; and

(6) Fully involve students with disabilities and, as appropriate, their representative in choosing and structuring their experiences;

(f) Provide instruction in employee rights and responsibilities, as well as positive work skills, habits, and behaviors that foster success in the workplace;

(g) Identify and provide support services, as appropriate, including transportation, that are needed to ensure the student's success in participating in work-based learning experiences;

(h) Identify, provide, or arrange for accommodations or assistive technology needed to ensure the student's success in participating in work-based learning experiences;

(i) Develop and implement a plan to measure the model demonstration project's performance and outcomes, including an evaluation of the effectiveness of the practices and strategies implemented by the project. A detailed and complete evaluation plan must include—

(1) A formative evaluation plan, consistent with the project's logic model (as defined in this notice), that—

(i) Includes evaluation questions, source(s) for data, a timeline for data collection, and analysis plans;

(ii) Shows how the outcome (*e.g.,* postsecondary education and competitive integrated employment) and implementation data will be used separately or in combination to improve the project during the performance period; and

(iii) Outlines how these data will be reviewed by project staff, when they will be reviewed, and how they will be used during the course of the project to adjust the model or its implementation to increase the model's usefulness, generalizability, and potential for sustainability; and

(2) A summative evaluation plan, including a timeline, to collect and analyze data on students and their outcomes over time, both for students with disabilities served by the project and for students with disabilities in a comparison group not receiving project services. The plan must show how the student outcome and implementation data collected by the project will be used separately or in combination to demonstrate the effectiveness of the model.

(j) Collect data necessary to evaluate the outcomes of the project, including the progress of the project in achieving its goals and outcomes, which, at a minimum, must include:

(1) The relevant available RSA–911 Case Service Report data for each student in the project;

(2) The number of students in the work-based learning project;

(3) The number of students in the project who complete at least one work-based learning experience;

(4) The number of work-based learning experiences that each student completes during the project;

(5) The types of work-based learning experiences in which students participated; and

(6) The number of students who attain a recognized post-secondary credential and the type of credentials attained;

(7) The number of students who obtain competitive integrated employment; and

(8) An unduplicated count of students who obtain a recognized postsecondary credential and competitive integrated employment.

To be considered for funding under Proposed Priority 1, an applicant also must provide the following with its application:

(a) A detailed review of the literature that supports the potential effectiveness of the proposed demonstration project, its components, and strategies for work-based learning experiences for students with disabilities;

(b) A logic model;

(c) A description of the applicant's plan for implementing the project, including a description of—

(1) A cohesive, articulated model of partnership and coordination among the participating agencies and organizations;

(2) The coordinated set of effective practices and strategies in the use and development of work-based learning models that are aligned with employment, training, and education programs and reflect the needs of employers and students with disabilities; and

(3) How the proposed project will—

(i) Involve employers in the project design and in partnering with project staff to develop integrated job shadowing, internships, apprenticeships, and other paid and unpaid work-based learning experiences that are designed to increase the preparation of students with disabilities for postsecondary education and competitive integrated employment;

(ii) Conduct outreach activities to identify students with disabilities for whom the work-based learning experiences would enable them to achieve competitive integrated employment; and

(iii) Identify innovative strategies, including development, implementation, and evaluation of approved models, methods, and measures, that will increase the preparation of students with disabilities for postsecondary education and competitive integrated employment;

(d) A description of the methods and criteria that will be used to select the site(s) at which the project activities will be implemented;

(e) Documentation (*e.g.,* letter of support or draft agreement) that the State VR agency has specific agreements with its partners in the development and implementation of the project;

(f) A plan for evaluating the project's performance, including an evaluation of the effectiveness of the practices and strategies implemented by the project, in achieving project goals and objectives. Specifically, the evaluation plan must include a description of—

(1) A formative evaluation plan, consistent with the project's logic model, that includes the following:

(i) The key questions to be addressed by the project evaluation and the appropriateness of the methods for how each question will be addressed;

(ii) How the methods of evaluation will provide valid and reliable performance data on relevant outcomes (as defined in this notice), particularly postsecondary and competitive integrated employment outcomes, including the source(s) for the data and the timeline for data collection;

(iii) A clear and credible analysis plan, including a proposed sample size and minimum detectable effect size that aligns with the expected project impact, and an analytic approach for addressing the research questions; and

(iv) How the key components of the project, as well as a measurable threshold for acceptable implementation and outcome data, will be reviewed and used to improve;

(2) A summative evaluation plan, including—

(i) How the outcomes and implementation data collected by the project will be used, separately or in combination, to demonstrate the effectiveness of the model; and

(ii) How the outcomes for students with disabilities served by the project will be compared with the outcomes of students with disabilities not receiving project services.

(g) A plan for systematic dissemination of project findings, templates, resources, and knowledge gained that will assist State and local VR and educational agencies in adapting or replicating the model work-based learning demonstration developed and implemented by the project, which could include elements such as development of a Web site, resources (*e.g.,* toolkits), community of practice, and participation in national and State conferences;

(h) An assurance that the employment goal for all students served under this priority will be competitive integrated employment, including customized or supported employment (as defined in this notice); and

(i) An assurance that the project will collaborate with other work-based learning initiatives.

Proposed Requirements for Priority 2: To meet Proposed Priority 2, applicants must meet the following requirements:

(a) Applicants must identify and include a detailed review of up to two cited studies that meet the evidence of promise standard.

(b) The links for the citations submitted for this priority must be provided on the Abstract and Information page of the application.

(c) Applicants must specify on the Abstract and Information page the findings in the studies that are cited as evidence of promise for the proposed project and ensure that the citations and links are from publicly or readily available sources. Studies of fewer than 10 pages may be attached in full under Other Attachments in Grants.gov.

Proposed Requirements for Priority 3: To meet Proposed Priority 3, applicants must describe in their applications how they would meet the following program requirements:

(a) Conduct an independent evaluation (as defined in this notice) of its project. This evaluation must estimate the impact of the project on a relevant outcome.

(b) Use methods of evaluation that will produce evidence about the project's effectiveness that meets the What Works Clearinghouse Evidence Standards with reservations.

(c) Make broadly available the results of any evaluations it conducts of its funded activities, digitally and free of charge, through formal (*e.g.,* peer-reviewed journals) or informal (*e.g.,* newsletters) mechanisms. The grantee must also ensure that the data from its evaluation are made available to third-party researchers consistent with applicable privacy requirements.

(d) Cooperate on an ongoing basis with any technical assistance provided by the Department or its contractor and comply with the requirements of any evaluation of the program conducted by the Department.

Definitions:

Background:

We propose one new definition for use in connection with the proposed priorities. The remaining definitions listed in this section are established defined terms in WIOA, the Rehabilitation Act, or 34 CFR part 77. We do not propose to alter those definitions, but list them here for the convenience of the reader.

Proposed Definition:

The Assistant Secretary proposes the following definition for this program. We may apply this definition in any year in which this program is in effect.

Independent evaluation means an evaluation that is designed and carried out independent of and external to the grantee but in coordination with any employees of the grantee who develop a process, product, strategy, or practice that is currently being implemented as part of the grant's activities.

Existing Definitions:

Career pathway means a combination of rigorous and high-quality education, training, and other services that—

(a) Aligns with the skill needs of industries in the economy of the State or regional economy involved;

(b) Prepares an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*);

(c) Includes counseling to support an individual in achieving the individual's education and career goals;

(d) Includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(e) Organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(f) Enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and

(g) Helps an individual enter or advance within a specific occupation or occupational cluster.

Source: Section 3(7) of WIOA.

Competitive integrated employment means work that is performed on a full-time or part-time basis (including self-employment)—

(a) For which an individual—

(1) Is compensated at a rate that—

(i)(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate specified in the applicable State or local minimum wage law; and

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(ii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(2) Is eligible for the level of benefits provided to other employees;

(b) That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

Source: Section 7(5) of the Rehabilitation Act.

Customized employment means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability, is designed to meet the specific disabilities of the individual with a significant disability and the business needs of the employer, and is carried out through flexible strategies, such as—

(A) Job exploration by the individual;

(B) Working with an employer to facilitate placement including—

(i) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(ii) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(iii) Representation by a professional chosen by the individual, or self-representation of the individual, in working with an employer to facilitate placement; and

(iv) Providing services and supports at the job location.

Source: Section 7(7) of the Rehabilitation Act.

Evidence of promise means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in both paragraphs (i) and (ii) of this definition are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental design study that meets the What Works Clearinghouse Evidence Standards with reservations; or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.

(ii) The study referenced in paragraph (i) of this definition found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger) favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

Source: 34 CFR 77.1(c).

Individual with a disability means an individual who—

(a) Has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and

(b) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to Title I, III, or VI of the Rehabilitation Act.

Source: Section 7(20) of the Rehabilitation Act.

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.*, the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Source: 34 CFR 77.1(c).

Pre-employment transition services means services provided in accordance with section 113 of the Rehabilitation Act.

Source: Sections 7(30) and 113 of the Rehabilitation Act.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

Source: 34 CFR 77.1(c).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

Source: 34 CFR 77.1(c).

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve, consistent with the specific goals of a program.

Source: 34 CFR 77.1(c).

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

Source: 34 CFR 77.1(c).

Student with a disability means an individual with a disability who—

(A)(1) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or

(2) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under the Rehabilitation Act, is not younger than that minimum age; and

(B)(1) Is not older than 21 years of age; or

(2) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), is not older than that maximum age; and

(C)(1) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*); or

(2) Is a student who is an individual with a disability, for purposes of section 504 of the Rehabilitation Act.

Source: Section 7(37)(A) of the Rehabilitation Act.

Supported employment means competitive integrated employment, including customized employment, or employment in an integrated work setting in which individuals are working on a short-term basis toward competitive integrated employment, that is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individuals involved, for individuals with the most significant disabilities—

(A)(i) For whom competitive integrated employment has not historically occurred; or

(ii) For whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disability, need intensive supported employment services and extended services after the transition described in section (7)(13)(C) of the Rehabilitation Act, in order to perform the work involved.

Source: Section 7(38) of the Rehabilitation Act.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Source: 34 CFR 77.1(c).

Final Priorities, Requirements, and Definitions:

We will announce the final priorities, requirements, and definitions in a notice in the **Federal Register**. We will determine the final priorities, requirements, and definitions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with

obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of similar demonstration projects have been well established over the years through the successful completion and dissemination of the results of similar projects. For example, the projects first funded in FY 2007 to demonstrate collaborative practices that lead to postsecondary education and employment of youth with disabilities have served as a rich source of practices for the VR field. These proposed priorities, requirements, and definitions would promote projects that would serve as models in developing and implementing work-based learning strategies for students with disabilities that could be replicated by other State VR agencies so that such agencies could improve postsecondary education and competitive integrated employment outcomes for students with disabilities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

These proposed priorities contain information collection requirements that are approved by OMB under the Disability Innovation Fund program—Transition Work-Based Learning Model Demonstrations 1820–0018; this proposed regulation does not affect the currently approved data collection.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 8, 2016.

Michael K. Yudin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2016–08492 Filed 4–12–16; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2013–0005: FRL–9944–89–Region 10]

Finding of Attainment and Approval of Attainment Plan for Klamath Falls, Oregon Fine Particulate Matter Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make a finding of attainment by the attainment date for the Klamath Falls, Oregon nonattainment area (the area) based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that the area has monitored attainment of the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) based on the 2012–2014 data available in the EPA's Air Quality System (AQS) database. The proposed finding of attainment does not constitute a redesignation to attainment. Redesignations require states to meet a number of criteria including EPA approval of a state plan to maintain the air quality standard for 10 years after redesignation.

The EPA also proposes to approve revisions to Oregon's State Implementation Plan (SIP) consisting of the Klamath Falls Fine Particulate Matter Attainment Plan (attainment plan) and approve and incorporate by reference associated revisions to the Oregon Administrative Rules (OAR),

submitted by the Oregon Department of Environmental Quality (ODEQ) on December 12, 2012. The purpose of the attainment plan was to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the December 2014 attainment date included in the plan, which the area met based on 2012–2014 monitoring data.

The attainment plan addressed the nonattainment planning requirements of the Clean Air Act (CAA or Act). The attainment plan included comprehensive base year and attainment year emissions inventories for direct $PM_{2.5}$ emissions and all particulate matter precursors, analysis and selection of reasonably available control measures and reasonably available control technologies (RACM and RACT), demonstrated attainment through selected permanent and enforceable control strategies, included required contingency measures, and addressed reasonable further progress and quantitative milestone requirements through the attainment demonstration. The attainment plan's strategy for controlling direct and precursor $PM_{2.5}$ emissions relied primarily on an episodic woodstove curtailment program and a program to change-out uncertified woodstoves. Additional emissions reductions came from control measures and activities associated with industrial sources and motor vehicles.

DATES: Comments must be received on or before May 13, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2013–0005 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information that is restricted by statute from disclosure. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *http://www.regulations.gov* or at EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo at (206) 553–6125, *spenillo.justin@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" is used, it is intended to refer to the EPA.

Table of Contents

I. Background for the EPA's Proposed Action
  A. History of the $PM_{2.5}$ Standard
  B. Effect of the January 4, 2013 D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4
  C. CAA $PM_{2.5}$ Nonattainment Area Requirements
  D. Klamath Falls Particulate Matter History
II. Finding of Attainment and Clean Data Determination
III. Analysis of Oregon's Submittal
  Previously Approved Attainment Plan Elements
  A. Emissions Inventory
  B. Control Measures—Oregon Rules and Klamath County Ordinance
  C. Classifications
  Attainment Plan Elements Proposed for Approval
  D. Attainment Date
  E. Attainment Demonstration
  F. Modeling
  G. Characterization of Klamath Falls Air Shed
  H. Reasonably Available Control Measures/Reasonably Available Control Technology (RACT/RACM)
  I. Contingency Measures
  J. Reasonable Further Progress (RFP) and Quantitative Milestones
  Additional Elements
  K. Conformity Requirements
  L. Klamath Falls Exceptional Event Demonstration and Concurrence
IV. Proposed Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background for the EPA's Proposed Action

A. History of the $PM_{2.5}$ Standard

On July 18, 1997, the EPA established the 1997 $PM_{2.5}$ NAAQS, including an annual standard of 15.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (or daily) standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations (62 FR 38652). The EPA established the 1997 $PM_{2.5}$ NAAQS based on significant evidence and numerous health studies demonstrating the serious health effects associated with exposures to $PM_{2.5}$. To provide guidance on the CAA requirements for state and tribal implementation plans to implement the 1997 $PM_{2.5}$ NAAQS, the EPA promulgated the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) (hereinafter, the "2007 $PM_{2.5}$ Implementation Rule").

On October 17, 2006, the EPA strengthened the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$ and retained the level of the annual $PM_{2.5}$ standard at 15.0 $\mu g/m^3$ (71 FR 61144). Following promulgation of a new or revised NAAQS, the EPA is required by the CAA to promulgate designations for areas throughout the United States; this designation process is described in section 107(d)(1) of the CAA. On November 13, 2009, the EPA designated areas as either attainment/unclassifiable or nonattainment with respect to the revised 2006 24-hour $PM_{2.5}$ NAAQS (74 FR 58688). In that November 2009 action, the EPA designated Klamath Falls, Oregon, as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS, requiring Oregon to prepare and submit an attainment plan for the Klamath Falls area to meet the revised 24-hour $PM_{2.5}$ NAAQS. On March 2, 2012, the EPA issued "Implementation Guidance for the 2006 24-Hour Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" to provide guidance on the development of SIPs to demonstrate attainment with the revised 24-hour standard (March 2012 Implementation Guidance). The March 2012 Implementation Guidance explained that the overall framework and policy approach of the 2007 $PM_{2.5}$ Implementation Rule provided effective and appropriate guidance on statutory requirements for the development of SIPs to attain the 2006 24-hour $PM_{2.5}$ NAAQS. Accordingly, the March 2012 Implementation Guidance instructed states to rely on the 2007 $PM_{2.5}$ Implementation Rule in developing SIPs to demonstrate attainment with the 2006 24-hour $PM_{2.5}$ NAAQS.

B. Effect of the January 4, 2013 D.C. Circuit Court Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4

On January 4, 2013, the D.C. Circuit Court issued a decision in *NRDC* v. *EPA*, 706 F.3d 428, holding that the EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1), rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I (subpart 4). The Court did not vacate the 2007 $PM_{2.5}$ Implementation Rule but remanded the rule with instructions for the EPA to promulgate new implementation regulations for the $PM_{2.5}$ NAAQS in accordance with the requirements of subpart 4. On June 6, 2013, consistent with the Court's remand decision, the EPA withdrew its March 2012 Implementation Guidance which relied on the 2007 $PM_{2.5}$ Implementation Rule to provide guidance for the 2006 24-hour $PM_{2.5}$ NAAQS.

Prior to the January 4, 2013 Court decision, states had worked towards meeting the air quality goals of the 2006 $PM_{2.5}$ NAAQS in accordance with the EPA regulations and guidance derived from subpart 1 of Part D of Title I of the CAA. The EPA considered this history in issuing the $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule (79 FR 31566, June 2, 2014) that identified the initial classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 $PM_{2.5}$ standards as moderate. The final rule also established December 31, 2014 as the deadline for the states to submit any additional SIP elements related to attainment.

The ODEQ submitted an attainment plan for Klamath Falls on December 12, 2012. The plan included measures to demonstrate attainment in December 2014. Concurrent with the December 31, 2014 deadline for submitting any supplements necessary to address possible subpart 4 elements, Klamath Falls came into attainment based on 2012–2014 monitoring data. Leading up to December 31, 2014 deadline, both the ODEQ and the EPA followed monitoring data closely to ensure that the area was meeting targets consistent with the modeling demonstration submitted in the attainment plan. Because the area was on a path toward attainment by December 2014 and the submitted attainment plan substantively addressed the specific $PM_{2.5}$ problems in the airshed, the ODEQ did not submit a supplement to its attainment plan. Therefore, the EPA evaluated the State's existing attainment plan submission for the 2006 $PM_{2.5}$ NAAQS to determine that it met not only the applicable requirements of subpart 1, but also the applicable requirements of subpart 4. This approach is consistent with the Court's decision that the EPA must implement the $PM_{2.5}$ NAAQS consistent with the requirements of subpart 4. In this notice, the EPA reviews the ODEQ's attainment plan submitted to comply with the requirements of subpart 1 and provides an evaluation of why we believe the submittal also satisfies subpart 4 requirements, including the applicable attainment date, and an analysis of all sources of particulate matter emissions and $PM_{2.5}$ precursors for control strategies.

C. CAA $PM_{2.5}$ Moderate Area Nonattainment Requirements

With respect to the requirements for attainment plans, the EPA notes that the general nonattainment area planning requirements are found in subpart 1, and the moderate area planning requirements for particulate matter are found in subpart 4. The EPA has a longstanding general guidance document that interprets the 1990 amendments to the CAA commonly referred to as the "General Preamble" (57 FR 13498, April 16, 1992). The General Preamble addresses the relationship between subpart 1 and subpart 4 requirements and provides recommendations to states for meeting statutory requirements for particulate matter nonattainment planning. Specifically, the General Preamble explains that requirements applicable to moderate area nonattainment SIPs are set forth in subpart 4, but such SIPs must also meet the general nonattainment planning provisions in subpart 1, to the extent these provisions "are not otherwise subsumed by, or integrally related to," the more specific subpart 4 requirements (57 FR 13538, April 16, 1992). Additionally, the EPA proposed the *Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements* rule (80 FR 15340, March 23, 2015), to clarify our interpretation of the statutory requirements that apply to Moderate and Serious $PM_{2.5}$ nonattainment areas (NAAs) under subparts 1 and 4.

The requirements of subpart 1 for attainment plans include: (1) The section 172(c)(1) requirements for reasonably available control measures (RACM), reasonably available control technology (RACT) and attainment demonstrations; (2) the section 172(c)(2) requirement to demonstrate reasonable further progress (RFP); (3) the section 172(c)(3) requirement for emissions inventories; (4) the section 172(c)(5) requirements for a nonattainment new source review (NSR) permitting program; and (5) the section 172(c)(9) requirement for contingency measures.

The subpart 4 requirements for moderate areas are generally comparable with the subpart 1 requirements and include: (1) The section 189(a)(1)(A) NSR permit program requirements; (2) the section 189(a)(1)(B) requirements for attainment demonstration; (3) the section 189(a)(1)(C) requirements for RACM; and (4) the section 189(c) requirements for RFP and quantitative milestones. In addition, under subpart 4 the moderate area attainment date is no later than the end of the 6th calendar year after designation.

The EPA evaluated the ODEQ's attainment plan for the Klamath Falls area for the 2006 24-hr $PM_{2.5}$ NAAQS and believes that the State's submission satisfies the relevant requirements of both subpart 1 and subpart 4, as discussed below.

D. Klamath Falls Particulate Matter History

The Klamath Falls area has a history of successfully addressing particulate matter for over 25 years. In 1987, the EPA designated Klamath Falls a nonattainment area for PM_{10}—particulate matter ten micrometers and smaller. The ODEQ prepared a PM_{10} attainment plan for the Klamath Falls Urban Growth Boundary (UGB) in 1991. The ODEQ revised and re-submitted the plan in 1995, and the EPA approved it on April 14, 1997 (62 FR 18047). The area's monitor began attaining the standard in 1992 and has not exceeded the standard since that time. In 2002, the ODEQ submitted a redesignation request and maintenance plan for PM_{10}. This plan demonstrated that the necessary control strategies were in place to maintain the PM_{10} NAAQS and the EPA approved the plan on October 21, 2003 (68 FR 60036). The attainment and maintenance plans relied on a mandatory episodic woodstove curtailment program and a large woodstove change-out program to reduce emissions from the primary contributor of particulate matter in the area. Additional measures provided control on industrial emissions and are discussed later in this notice. The area has continued to maintain the PM_{10} NAAQS.

In 1997, the EPA revised the particulate standard to include $PM_{2.5}$ (particulate matter 2.5 micrometers in diameter and smaller) at a daily standard of 65 $\mu g/m^3$. Due to the same set of control measures that it used to address exceedances of the PM_{10}

standard, Klamath Falls successfully remained below the $PM_{2.5}$ standard promulgated in 1997. When the EPA tightened the $PM_{2.5}$ standard from 65μg/m³ to 35μg/m³ in 2006, Klamath Falls was found to be exceeding the new standard. The EPA subsequently designated the area as nonattainment for the 2006 24-hour $PM_{2.5}$ standard in November 2009, prompting the adoption of more stringent control measures and submission of the attainment plan in 2012.

II. Finding of Attainment and Clean Data Determination

Pursuant to sections 179(c) and 188(b)(2) of the Act, the EPA has the responsibility of determining within six months of the applicable attainment date whether nonattainment areas attained the NAAQS based on certified air quality data. The EPA reviewed the $PM_{2.5}$ ambient air monitoring data from the Peterson School regulatory monitor (AQS site 41–035–0004 POC1), consistent with the requirements contained in 40 CFR part 50, as recorded in the EPA Air Quality System (AQS) database for the Klamath Falls area. For purposes of determining attainment by the attainment date, the EPA considered data recorded in the AQS database, certified as meeting quality assurance requirements, and determined to have met data completeness requirements. On the basis of this review, the EPA has concluded that the Klamath Falls area attained the 2006 24-hour $PM_{2.5}$ NAAQS during the 2012–2014 monitoring period—*http://www.epa.gov/airtrends/values.html.* Specifically, under the EPA regulations at 40 CFR 50.7, the 24-hour primary and secondary $PM_{2.5}$ NAAQS are met when the 98th percentile 24-hour concentration is less than or equal to 35 μg/m³. The design value (the metrics calculated in accordance with 40 CFR part 50, appendix N, for determining compliance with the NAAQS) for the 2006 24-hour $PM_{2.5}$ NAAQS for the years 2012–2014 at the Peterson School monitor was 34 μg/m³, meeting the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date established in the 2012 attainment plan. As a result, the EPA proposes to determine that the area has attained the 2006 24-hour $PM_{2.5}$ NAAQS.

Additionally, the EPA is proposing to determine that the area has clean data for the 2006 24-hour $PM_{2.5}$ NAAQS. This determination is based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that the area has monitored attainment of the 2006 $PM_{2.5}$ NAAQS based on 2012–2014 monitoring data, discussed above. Under a Clean Data Determination (CDD), the requirements for the area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and any other planning SIP requirements related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS would be suspended for so long as the area continues to meet this NAAQS. If EPA subsequently determines that the area is in violation of the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist and the area would thereafter have to address the pertinent requirements. Although a CDD suspends the requirement for submission of certain attainment planning elements, it does not relieve the EPA of its responsibility to take action on a state's SIP submission. As described in this action, the EPA is proposing to fully approve the remaining elements of the Klamath Falls nonattainment plan as meeting the requirements of the CAA.

The proposed finding of attainment by the attainment date and clean data determination that the air quality data shows attainment of the 2006 24-hour $PM_{2.5}$ NAAQS is not equivalent to the redesignation of the area to attainment. This proposed action, if finalized, will not constitute a redesignation to attainment under section 107(d)(3) of the CAA, because the state must have an approved maintenance plan for the area as required under section 175A of the CAA, and a determination that the area has met the other requirements for redesignation in order to be redesignated to attainment. The designation status of the area will remain nonattainment for the 2006 $PM_{2.5}$ NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment in CAA section 107(d)(3)(E).

III. Analysis of Oregon's Submittal

In accordance with Sections 172(c) and 189 of the CAA, the attainment plan that the ODEQ submitted for the Klamath Falls area included comprehensive base year and attainment year emissions inventories that addressed direct particulate matter emissions and all particulate matter precursors, analyzed RACM and RACT, demonstrated attainment through selected permanent and enforceable control strategies, included required contingency measures, and addressed reasonable further progress and quantitative milestone requirements through the attainment demonstration. The attainment plan's strategy for controlling direct and precursor $PM_{2.5}$ emissions relied primarily on an episodic woodstove curtailment program and the change-out of uncertified woodstoves. Additional emissions reductions came from control measures and activities associated with industrial sources, motor vehicles, and public education.

The rule revisions submitted by the ODEQ and the ordinances passed by Klamath County support the implementation of these control measures in a manner that is both permanent and enforceable. The EPA approved, on August 25, 2015, the baseline emissions inventory and control measures associated with this attainment plan (80 FR 51470). By including these measures in the SIP, the state has made them permanent and enforceable, and with the EPA's approval of these control measures on August 25, 2015, the measures have become federally enforceable. This submittal also addresses transportation conformity budgets and the EPA's proposed approval to exclude data from wildfire exceptional events affecting data on September 25, 2009 (for purposes of the attainment demonstration), August 25, 2012, August 28, 2012, August 31, 2012, July 30, 2013, and August 5, 2013 (for purposes of the finding of attainment) that affected the regulatory monitor in Klamath Falls.

Previously Approved Attainment Plan Elements

A. Emissions Inventory

The baseline emission inventory requirements were approved in an action completed on August 25, 2015 (80 FR 51470). The approved emissions inventory covered direct $PM_{2.5}$ and precursors to the formation of $PM_{2.5}$ (nitrogen oxides (NO_X), volatile organic compounds (VOCs), ammonia (NH_3), and sulfur dioxide (SO_2)) to meet the comprehensive emissions inventory requirement of CAA section 172(c) for the 2006 24-hour $PM_{2.5}$ NAAQS. The emissions inventory applicable to the attainment demonstration and the attainment year inventory will be discussed in the Modeling and Attainment Demonstration sections of this notice.

B. Control Measures—Oregon Rules and Klamath County Ordinance

The December 12, 2012 attainment plan submitted by the ODEQ included revisions to a number of administrative rules to implement the attainment plan for the Klamath Falls area. These revisions consisted of updates to identify the Klamath Falls nonattainment area and to adopt local and state measures to ensure permanent and enforceable control strategies and contingency measures, as described in the attainment plan, to bring the area back into attainment in the event the area failed to meet RFP or failed to attain the NAAQS by the applicable attainment date. Specifically, the ODEQ revised rules in OAR 340, Divisions 200, 204, 225, 240, 262, and 264. The EPA already provided notice and comment on these rules, except for the contingency measures, and proposed to approve the rules on December 30, 2014 (79 FR 78372) and finalized the action on August 25, 2015 (80 FR 51470). These control measures were relied upon by Klamath Falls to attain the standard by 2014 and will remain in place for continued maintenance of the standard. Further details on these control measures can be found in the docket for this action within the Klamath Falls attainment plan submittal as well as in the proposed and final **Federal Register** notices approving these measures.

C. Classifications

The applicable attainment planning requirements under subpart 4 (section 189(a) and (b)) depend on whether the nonattainment area is classified as moderate or serious. In response to the Court's decision in *NRDC* v. *EPA,* the EPA finalized on June 2, 2014, initial classifications of all current 1997 and 2006 $PM_{2.5}$ nonattainment areas as moderate (79 FR 31566). Thus, the attainment plan submitted by the ODEQ for the Klamath Falls area is evaluated pursuant to the moderate area requirements of subpart 4.

Attainment Plan Elements Proposed for Approval

D. Attainment Date

The CAA requirements of subpart 4 include a demonstration that a nonattainment area will meet applicable NAAQS within the timeframe provided in the statute (Section 189(c)(1)). For the 2006 $PM_{2.5}$ 24-hour NAAQS, an attainment plan must show that a moderate nonattainment area will attain the standard as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation, which in the case of Klamath Falls is December 31, 2015. In the Klamath Falls attainment plan the ODEQ demonstrated that attainment by December 2014 was as expeditious as practicable based on the implementation of all reasonably available control measures (RACM) and that the attainment date could not be advanced by a year or more with additional reasonable measure (*e.g.* RACM). The EPA is proposing to approve the attainment date of December 2014 as submitted by the ODEQ, which the area successfully met as confirmed by quality-assured, quality-controlled, and certified ambient air monitoring data.

E. Attainment Demonstration

Section 189(a)(1)(B) requires that a moderate area nonattainment plan contain either a demonstration that the plan will provide for attainment by the applicable attainment date, or a demonstration that attainment by such date is impracticable. In the attainment demonstration section of the Klamath Falls $PM_{2.5}$ attainment plan, the ODEQ described how its chosen control strategies would provide the emissions reductions needed to bring the area into attainment no later than December 2014. Quality-assured, quality-controlled, and certified ambient air monitoring data confirm that the area has attained the 2006 24-hour $PM_{2.5}$ NAAQS by December 2014.

TABLE 1—ATTAINMENT DEMONSTRATION STRATEGIES FOR THE KLAMATH FALLS AREA

Control strategies	Projected air quality benefit (µg/m³)
Baseline Design Value 2008	45.1
Klamath Clean Air Ordinance (updated)	9.6
• Woodstove curtailment—lower thresholds and increased enforcement.	
• Shorter open burning window	
Woodstove Change-out Programs	1.0
Heat Smart—woodstove change-out upon sale of home	0.3
Maximum Achievable Control Technology (MACT) particleboard and hardboard	0.1
Public Awareness	0.6
New fireplace standards	0.1
Transportation and Fuel Related Emissions	Minimal
• Diesel Retrofits	
• Low Emission Vehicle Program	
• Fuel Economy	
Road Paving	Minimal
Future Design Value 2014	34.6*

*The individual emission reduction estimates in this table are derived from the modeled Future Design Value in 2014. The air quality benefit for individual control measures were assessed in isolation and are presented as such in Table 1. Because the control strategies interact nonlinearly, the final design value is not a simple subtraction of the individual measures' benefits from the baseline design value. When all control strategies are simulated together, their benefit is less than it would appear because, for instance, the curtailment ordinance has a smaller benefit when stoves have been changed out to be cleaner.

Using the values in Table 1, results from the roll-forward modeling showed that the control strategies would achieve a future year design value of 35 µg/m³ with a relative response factor (RRF) of 0.717, as explained in more detail in the modeling discussion. In order to provide a buffer to ensure attainment, the ODEQ, Klamath Falls, and Klamath County implemented additional measures which yielded a modeled design value of 34.6 µg/m³ with an RRF of 0.667. As noted in the RACM/RACT discussion later in this document, more than 95% of the projected control strategy air quality benefits came from the Klamath Falls Clean Air Ordinance wood smoke curtailment program (the Ordinance), woodstove change-out program, and the Heat Smart program. The ODEQ and Klamath County relied on the Ordinance and the woodstove change-out program to successfully attain the 2006 $PM_{2.5}$ NAAQS. The woodstove curtailment program restricts residential wood burning on days when the ambient $PM_{2.5}$ levels are close to exceeding the standard. Additional reductions came from the control of industrial sources and from continuing reductions in direct $PM_{2.5}$ emissions from cleaner motor vehicles, as described later in this document.

The ODEQ included a number of supplemental analyses in the attainment plan for a weight of evidence demonstration of attainment, as recommended by the EPA's modeling guidance. Attachments 3.3 b–e, g–o, w, and y of the submitted plan (located in the docket) describe the Klamath Falls airshed, the source sector contributions, and the ability of emission controls to reduce $PM_{2.5}$ concentrations.

The ODEQ identified wood burning emissions as the most significant source sector in the emissions inventory and thus the key source sector to attainment with its readily available emissions reductions. Accordingly, in formulating an emissions control strategy, the ODEQ conducted detailed wood burning surveys for the Klamath Falls area, assessed the contribution of secondary organic aerosol to overall $PM_{2.5}$, used locally-derived estimates for how well wood burners follow the yellow and red curtailment requirements, assessed the impact of prescribed burning on wintertime $PM_{2.5}$, and used the best available emission factors for wood burning devices. This level of analysis is consistent with other moderate nonattainment areas where wood burning is a significant issue.

In addition to demonstrating attainment using the roll-forward model, the ODEQ also conducted an unmonitored area analysis (UMAA) to demonstrate that other parts of the nonattainment area would also meet the 2006 24-hour $PM_{2.5}$ NAAQS. This analysis used data from seven monitors in the area for a saturation survey in 2010–2011 to develop a map of $PM_{2.5}$ concentration relative to the main monitor at the Peterson School. The UMAA calculated the $PM_{2.5}$ from point sources at 1.2 kilometer intervals in the nonattainment area and added this calculation to the projected concentration from all other sources. Results from the UMAA showed that the Peterson Area monitor is the area of highest neighborhood-scale concentration, such that one could reasonably infer that unmonitored areas of the nonattainment area were in attainment based on a finding of attainment at the Peterson Area monitor.

F. Modeling

All attainment demonstrations must project air quality below the standard using standard modeling techniques. The ODEQ submitted a modeled demonstration that is consistent with the recommendations contained in EPA's modeling guidance document "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze" (EPA–454/B–07–002, April 2007) and the June 28, 2011, memorandum from Tyler Fox to Regional Air Program Managers, "Update to the 24-hour $PM_{2.5}$ Modeled Attainment Test." Modeling should be based on national (*e.g.*, EPA), regional (*e.g.*, Western Regional Air Partnership) or local modeling, or a combination thereof, if appropriate. The April 2007 guidance indicates that states should review supplemental analyses, in combination with the modeling analysis, in a "weight of evidence" assessment to determine whether each area is likely to achieve timely attainment.

To determine which control strategies to implement, the ODEQ began by characterizing the area's emissions. Along with developing the 2008 baseline emissions inventory, the ODEQ also conducted a series of analyses to better understand particulate matter in Klamath Falls. This included conducting and reviewing studies, analyzing filter samples, and modeling.

For modeling attainment in Klamath Falls, the ODEQ used a roll-forward model as the basis for projecting future design values and the effect of control strategies. A standard roll-forward model assumes all sources contribute to the Peterson School monitor in proportion to their weight in the emissions inventory. This is a reasonable assumption for most source categories which were mostly direct $PM_{2.5}$ because they are relatively well-distributed within the nonattainment area, but for certain source categories such as large point sources, prescribed burning, and road dust, this assumption is not always accurate. For these three source categories, effective primary $PM_{2.5}$ and $PM_{2.5}$ precursor emission rates were derived from additional analyses including AERMOD atmospheric dispersion modeling for large point sources, positive matrix factorization (PMF) modeling for road dust, and analysis of historical prescribed burning and its impact on $PM_{2.5}$ at the Peterson School monitor. The ODEQ developed several emissions inventories for modeling, one for the current emissions for the baseline year of 2008 and two for the attainment year of 2014. The projected 2014 attainment year inventory accounts for all changes (*i.e.* vehicle fleet turnover, population changes) that were expected to occur from 2008 to 2014, except for the locally imposed control strategies. The ODEQ then applied each local control strategy to the 2014 modeling inventory in isolation, and as a group, as part of developing the control 2014 inventory for modeling. When each of these modeling inventories was run through the model, the ODEQ was able to estimate the relative change in $PM_{2.5}$ resulting from each control strategy in isolation and from all control strategies at the same time. See Table 1 in the Attainment Demonstration section.

The relative change in modeled, species-specific $PM_{2.5}$ concentrations at the Peterson School monitor between the 2014 control strategy run and the 2008 baseline is referred to as a Relative Response Factor (RRF). The ODEQ calculated RRFs separately for each chemical component of $PM_{2.5}$, per the EPA modeling guidance. The RRFs for ammonium, sulfate, nitrate, and particle-bound water were held at 1.0 (*i.e.* constant), which is a conservative assumption implying that there will be no reduction in precursor emissions. However, NO_X emissions are projected to decline from 2,236 tons per year (tpy) in 2008 to 1,810 tpy in 2014, VOC emissions are projected to decline from 2,910 tpy in 2008 to 2,645 in 2014, and ammonia emission inventories are projected to remain fairly level at 244 tpy in 2008 and 247 tpy in 2014. The RRF for organic carbon and elemental carbon are allowed to fluctuate based on projected emissions and the model, but the RRF for organic aerosol does not account for changes in secondary organic aerosol because a chemical box model analysis conducted by the ODEQ and Portland State University (Appendix A–6–1 of the attainment plan) found that contributions from both biogenic and anthropogenic secondary organic aerosol (SOA) sources were minor (less than 1% and 3%, respectively, of total design value $PM_{2.5}$). By keeping the RRF constant for secondary $PM_{2.5}$, the ODEQ took a conservative approach in modeling emission reductions because the emissions inventory values for most secondary $PM_{2.5}$ precursors were projected to decline between 2008 and 2014 due to control measures already in place. In the attainment plan submission, SO_2 emission inventories were projected to increase slightly from 110 tpy in 2008 to 136 tpy in 2014. However, it is important to note that

32.2 tpy of projected growth in the SO_2 emissions inventory was due to the anticipated addition of the Klamath Falls Bioenergy facility that was expected to be built by 2014. This facility has since withdrawn its application for a site certification and will not be constructed. Removing these projected emissions results in a net decrease of 6.2 tpy in overall projected SO_2 emissions from 2008 to 2014.

The ODEQ applied the species-specific RRFs to the baseline 2006–2010 monitored data based on the EPA's guidance to estimate 2014 design values. The modeling projected an attainment date of December 2014 which the area achieved. The EPA carefully evaluated the ODEQ's modeling demonstration and concluded that it adequately meets the current EPA modeling requirements, and uses acceptable modeling techniques to project attainment by the December 2014 attainment date.

In addition, the EPA believes that the attainment demonstration modeling submitted by the ODEQ meets subpart 4 requirements. First, section 189(a)(1)(B) provides that for a moderate nonattainment area, a state must submit either a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date or a demonstration that attainment by such date is impracticable. The applicable attainment date for moderate areas in section 188(c)(1) of subpart is as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation, or, as applied to Klamath Falls, December 2015. The ODEQ's modeling demonstrated attainment by December 2014, which is a year earlier than the December 2015 attainment deadline. Second, the modeling relied upon by the ODEQ included both direct $PM_{2.5}$ and $PM_{2.5}$ precursors. The ODEQ's weight of evidence analysis is further supported by quality-assured, quality-controlled, and certified ambient air monitoring data showing that the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS based on the 2012–2014 data. For these reasons, the EPA proposes to find that the ODEQ's modeling is consistent with EPA's guidance and meets the attainment demonstration requirements of subparts 1 and 4.

G. Characterization of the Klamath Falls Air Shed

In evaluating the Klamath Falls attainment plan under the requirements of subpart 4, control of direct $PM_{2.5}$ and precursors must be considered. According to CAA section 302(g) the term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by product material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used. The provisions of subpart 4 do not define the term "precursor" for purposes of particulate matter, nor do they explicitly require the control of any specifically identified precursor. However, the EPA has long recognized the scientific basis for concluding that SO_2, NO_X, VOC, and ammonia are precursors to PM_{10} and to $PM_{2.5}$.[1]

The EPA's interpretation of section 189(e) and section 172 indicates that consideration of all precursors is necessary for $PM_{2.5}$ attainment plans, and RACM/RACT requirements explicitly require the evaluation of available control measures for direct $PM_{2.5}$ emissions and precursor emissions from stationary, area, and mobile sources in order to attain as expeditiously as practicable. Section 189(e) requires the control of appropriate precursors from major stationary sources, unless the Administrator determines that precursor emissions from such major stationary sources do not contribute significantly to nonattainment in the area.[2]

While subpart 4 expressly requires control of precursors from major stationary sources where direct PM from major sources is controlled unless certain conditions are met, other sources of precursors may also need to be controlled for the purposes of demonstrating attainment as expeditiously as practicable in a given area. Thus, a state should evaluate all economically and technologically feasible control measures for direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions, and should adopt those measures that are deemed reasonably available, *i.e.*, those constituting RACM and RACT controls for sources located in the area. The EPA has interpreted subpart 4 to require analysis for control of precursors from all source categories in a given nonattainment area, unless there is a demonstration that controlling a precursor or precursors is not necessary for expeditious attainment of the NAAQS in the area. This notice will demonstrate that additional precursor controls beyond those discussed in Oregon's 2012 attainment plan submission will not affect expeditious attainment of the NAAQS in the Klamath Falls area; moreover the area is already attaining the NAAQS with existing controls and additional precursor controls are unnecessary for expeditious attainment.

As discussed in the EPA's 1992 General Preamble, in the event that a state's attainment plan includes controls on major stationary sources for PM_{10} in order to achieve timely attainment in the area, section 189(e) requires controls of all PM_{10} precursors for major stationary sources located within the area, unless there is a showing that such sources do not contribute significantly to violations in the area (57 FR 13541, April 16, 1992). Thus, the EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10}, as set out in the General Preamble, contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, *i.e.*, states may determine that only certain precursors need be regulated for attainment purposes. *Id.; see also Assoc. of Irritated Residents* v. *EPA, et al.*, 423 F.3d 989 (9th Cir. 2005). The EPA believes that application of this same approach to $PM_{2.5}$ precursors under subpart 4 is appropriate and reasonable at this time. Indeed, the EPA has already taken action upon attainment plans for the 1997 $PM_{2.5}$ NAAQS in other areas after carefully evaluating the state's conclusions regarding which $PM_{2.5}$ precursors should be regulated in the area at issue.[3]

The General Preamble describes the assessment of precursors as specific to each nonattainment area, and acknowledges that the determination of precursor significance would likely vary based on the characteristics of the area-wide nonattainment problem. The General Preamble further provides that in making a determination regarding the significance of precursors, the EPA will rely on technical information presented in the state's submittal, including filter analysis, the relative contribution to overall nonattainment, the selected control strategies, as well as other relevant factors (57 FR 13541, April 16, 1992). The remanded 2007 $PM_{2.5}$ Implementation Rule also discusses the types of technical analyses that states could perform to demonstrate the significance or insignificance of a particular precursor for purposes of attainment, such as emission inventory information, speciation data information, modeling, or monitoring data.

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[1] *See* EPA's 2007 $PM_{2.5}$ Implementation Rule at issue in the *NRDC* v. *EPA* case in which EPA discussed that emissions of SO_2, NO_X, VOCs and ammonia are factual and scientific precursors to $PM_{2.5}$. 72 FR 20586, at 20589–97. April 25, 2007.

[2] EPA notes that it has already addressed the requirements of subpart 4 for precursors, specifically within the context of the requirements of section 189(e), in the General Preamble. *See* 57 FR at 13539 and 13541–2, April 16, 1992.

[3] *See, e.g.*, "Approval and Promulgation of Implementation Plans; California; 2008 San Joaquin Valley $PM_{2.5}$ Plan and 2007 State Strategy," (76 FR 69896, November 9, 2011).

For the reasons discussed in this section, the EPA believes that the ODEQ's attainment plan adequately evaluated emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors as demonstrated in the attainment plan and supported by attainment of the NAAQS. The $PM_{2.5}$ precursor analysis relied on the types of analyses discussed in the General Preamble and the remanded 2007 $PM_{2.5}$ Implementation Rule for demonstrating the contribution of $PM_{2.5}$ precursors. Based on these analyses, supported by current monitoring data, the ODEQ submittal showed that direct $PM_{2.5}$ emissions were the primary contributor to the nonattainment problem and that additional emissions reductions from $PM_{2.5}$ precursors were not needed for demonstrating attainment, not economically or technologically feasible to advance the attainment date by one year, and that existing control measures adequately addressed precursors in light of the minimal impact secondary organic formation has on this specific airshed, as evidenced by the Portland State University SOA study and the EPA's Positive Matrix Factorization (PMF) analysis. Accordingly, the ODEQ selected control strategies to reduce emissions of direct $PM_{2.5}$ and provided a demonstration that implementation of these strategies would bring the area into attainment by the attainment date.

The ODEQ's attainment plan for Klamath Falls focused on controlling direct $PM_{2.5}$ emissions to attain the 2006 24-hr $PM_{2.5}$ NAAQS. Notably, this was the predominant strategy for controlling $PM_{2.5}$ in Tacoma, Washington, which is similarly impacted by direct $PM_{2.5}$ emissions from residential wood smoke and was recently redesignated to attainment as a result of its implementation of residential wood smoke direct $PM_{2.5}$ control strategies. In support of this control strategy, the ODEQ attainment plan and supporting analyses showed that: (1) The Klamath Falls area attained the standard, (2) control of direct $PM_{2.5}$ would reduce exceedances of the NAAQS, and (3) emissions from residential wood combustion were the largest contributors to $PM_{2.5}$ on polluted days. The EPA reviewed the ODEQ's attainment plan and proposes to find that this approach to direct $PM_{2.5}$ and precursors is appropriate for the Klamath Falls area and is consistent with the requirements of subpart 4.

1. Quality Assured Monitoring Data Showing Attainment

As described in Section II. Finding of Attainment, the Klamath Falls area met the 2006 24-hour $PM_{2.5}$ NAAQS during the 2012–2014 monitoring period using the approach to direct $PM_{2.5}$ and precursor pollutants adopted by the State in the submitted attainment plan. Given the area's attainment of the 2006 24-hour $PM_{2.5}$ NAAQS and continued attainment, it follows that no additional controls of direct $PM_{2.5}$ and precursors beyond those described in the attainment plan are necessary for the area to timely attain the NAAQS. Because EPA's longstanding approach to precursors under subpart 4, as explained in the General Preamble, authorizes a state to establish that it can attain the NAAQS expeditiously by focusing on some but not all precursors, the EPA believes that the ODEQ's submitted attainment plan for the Klamath Falls area is consistent with this aspect of subpart 4.

As previously discussed in the Attainment Demonstration section III. E., the ODEQ demonstrated the ability to reduce the emissions in Klamath Falls below 35 $\mu g/m^3$ by December 2014. Control measures considered for demonstrating attainment are discussed in section III. H. RACT/RACM below, and the chosen methods primarily focus on the reduction of direct $PM_{2.5}$. Table 1 in the Attainment Demonstration section identifies the 2008 baseline design value as 45.1 $\mu g/m^3$ and then shows how the direct $PM_{2.5}$ projected air quality benefits from the chosen control strategies will achieve a future design value in 2014 below 35 $\mu g/m^3$. The RACT/RACM section will also identify that other reductions would be needed to advance the attainment date by one year, but that the remaining control measures were determined to not be economically and/or technologically feasible, or collectively amount to reductions necessary to advance attainment by one year—1.67 $\mu g/m^3$.

2. Control of Direct Emissions of $PM_{2.5}$ Would Reduce Exceedances of the NAAQS

The ODEQ determined that direct $PM_{2.5}$ was the primary contributor to winter time exceedances in the Klamath Falls area. As is typical of many areas in the Pacific Northwest region that experience $PM_{2.5}$ exceedances from anthropogenic sources, these exceedances occur during the winter when temperatures are low and air stagnation conditions are present. These conditions lead to increases in residential wood heating which generate the majority of direct $PM_{2.5}$ emissions reaching the monitor. This relationship is supported by a SANDWICH (Sulfate, Adjusted Nitrate, Derived Water, Inferred Carbonaceous Material Balance Approach) chemical speciation analysis on days that exceeded the standard and an analysis of primary and secondary organic aerosols conducted by Portland State University (PSU), as discussed above.

The SANDWICH chemical speciation analysis determined that $PM_{2.5}$ mass on days exceeding the standard was 80% organic and elemental carbon. The PSU study showed that the contributions from both biogenic and anthropogenic sources of secondary organic aerosols were minor, contributing 1% and 3%, respectively, to the total $PM_{2.5}$ design value. The bulk of emissions causing exceedances were from directly emitted organic and elemental carbon $PM_{2.5}$ (*See* attainment plan attachments 3.3f, 3.3g1, 3.3g2). Based on this weight of evidence, the ODEQ concluded that direct $PM_{2.5}$ was the primary contributor to exceedances of the 2006 24-hr $PM_{2.5}$ NAAQS at the regulatory monitor in the Klamath Falls area.

3. Emissions From Residential Wood Combustion Were the Largest Contributors to $PM_{2.5}$ on Polluted Days

The 2008 emissions inventory compiled by the ODEQ calculated a direct $PM_{2.5}$ emissions rate of 654.7 tpy. Approximately 62% of the total annual emissions were attributable to area sources, primarily of emissions from residential wood combustion. Worst case daily emissions of direct $PM_{2.5}$ were calculated at 5,420 pounds (lbs) per day with 53% of total emissions attributable to area sources, primarily emissions from residential wood combustion. To assess how these emissions translated into contributions at the monitor, the EPA conducted a PMF analysis as discussed above based on speciated data from the Klamath Falls violating monitor. The results of the PMF analysis showed that emissions of residential wood smoke contributed an estimated 64–72% of total $PM_{2.5}$ concentrations at the monitor (attachment 3.3h). Residential wood combustion also emits small amounts of SO_2, NO_X, VOC, and ammonia, 4%, 2%, 11%, and 6%, respectively, of the inventory for these precursors on the "worst case day." So not only did primary organic and elemental carbon make up over 60% of the $PM_{2.5}$ mass at the monitor based on the emissions inventory data, PMF analysis, and speciation analyses, but control measures to address residential wood combustion also had the collateral benefit of reducing the precursor inventory.

General $PM_{2.5}$

According to the SANDWICH and PSU analyses secondary $PM_{2.5}$ conservatively comprised 20% of the $PM_{2.5}$ in Klamath Falls on days with monitored $PM_{2.5}$ concentrations above 25 $\mu g/m^3$. By species, the percentages were 9.6% for nitrate, 4.2% for particle-bound water, 3% for anthropogenic secondary organic aerosols (SOA), 1.6% for sulfate, 1% for biogenic SOA, and 0.7% for ammonium.

The 2008 baseline emission inventory for NO_X was 2,236 tpy annually and 15,483 lbs/day during wintertime $PM_{2.5}$ episodes. The non-road and on-road mobile source categories contributed 70% to annual and worst case day NO_X emissions. The ODEQ's 2014 attainment inventory showed decreases from 2008 of over 30% in NO_X on-road and non-road mobile source emissions attributed to federal mobile source control measures.[4] The decrease of 3,425 lbs/day from motor vehicle controls was greater than the NO_X emissions from all the stationary point sources combined, two of which are already subject to NO_X controls. The remaining 9% of NO_X emissions were spread among area sources such as natural gas combustion and residential wood combustion.

Other secondary species were similarly small components and were generally emitted by multiple source categories. While VOCs were the largest source of precursor emissions on a pound per day basis (2,910.4 tpy annually; 22,754 lbs/day during wintertime episodes), the anthropogenic secondary organic carbon produced from such emissions only contributed 3% of the $PM_{2.5}$ mass. Emissions of VOCs were split among the stationary point sources (45%), area sources (30%), and mobile sources (25%). Much of the SO_2 (109.9 tpy; 1,046 lbs/day) emissions were from fuel oil combustion, with the resulting ammonium sulfate and associated particle-bound water contributing less than 5% of the $PM_{2.5}$ mass. Ammonium on its own, disassociated from its sulfate and nitrate, was less than 1% of the $PM_{2.5}$ mass. Based on the weight of evidence provided in the attainment plan, the EPA finds that the ODEQ appropriately considered all precursors in their analysis.

Industrial $PM_{2.5}$

With respect to emissions of $PM_{2.5}$ precursors from major stationary sources pursuant to section 189(e), the analyses discussed above, which were conducted for all sources generally, are similarly applicable to control of precursor emissions from stationary sources. The ODEQ identified four Title V stationary sources with annual primary $PM_{2.5}$ emissions exceeding 10 tpy for consideration in its RACT analysis. These sources were identified in the 2008 baseline emissions inventory as Columbia Forest Products (48.9 tpy), Collins Forest Products (48.4 tpy), Klamath Energy Cogeneration (39.9 tpy) and Jeld-Wen (17.3 tpy). Emissions of direct $PM_{2.5}$ from all other stationary sources in the aggregate amounted to less than 10 tpy. A consideration in the ODEQ's assessment of these facilities was AERMOD modeling which indicated that all industrial point sources combined contributed only 1% of the baseline primary $PM_{2.5}$ design value, as opposed to residential wood combustion which accounts for roughly two-thirds. These sources are located relatively far away from the area where the greatest $PM_{2.5}$ concentrations existed, as confirmed by the monitoring saturation study, compared to residential wood combustion which showed a much greater impact on $PM_{2.5}$ concentrations. Also, industrial stationary source stacks send emissions higher into the atmosphere, and the inversions that trap area and mobile source emissions near the ground also reduce mixing of the elevated stack emissions to the surface.

In summary, the ODEQ provided data and analyses indicating that direct $PM_{2.5}$ was the main cause of exceedances of the 2006 24-hr $PM_{2.5}$ standard in Klamath Falls and that precursor emissions are relatively minor contributors to monitored violations in the Klamath Falls area.

H. Reasonably Available Control Technology/Reasonably Available Control Measures (RACT/RACM)

The Klamath Falls attainment plan addressed the RACT/RACM requirement under subpart 1. It did not directly discuss whether the analysis and selection of RACT/RACM also meets the subpart 4 requirements determined to be applicable in *NRDC* v. *EPA* because the Court decision occurred after the ODEQ's submittal of the attainment plan, and preliminary monitoring data showed that the area was on a path to come into attainment concurrent with the EPA's deadline for any additional submittals under subpart 4. The EPA in this notice addresses whether the RACT/RACM analysis complies with subpart 4 as well as subpart 1, and evaluates whether application of subpart 4 criteria would affect the control measures identified as part of the ODEQ's control strategy for the Klamath Falls area.

The general SIP planning requirements for nonattainment areas under subpart 1 include section 172(c)(1), which requires implementation of all RACM (including RACT). The CAA section 172(c) indicates that what constitutes RACM or RACT is related to what is necessary for attainment in a given area, as the provision states that nonattainment plans shall provide for attainment of the NAAQS in the area covered by the attainment plan.

The EPA based its remanded 2007 $PM_{2.5}$ Implementation Rule on the general attainment plan requirement for RACM and RACT in section 172(c). The EPA included requirements for the process by which states should determine and establish what control measures would constitute RACM and RACT level controls for appropriate sources in a given nonattainment area. Specifically, in 40 CFR 51.1010(a), the EPA provided that a state should submit a demonstration that it had adopted all RACM and RACT "necessary to demonstrate attainment as expeditiously as practicable and to meet RFP requirements." The EPA also required states to include a "list of the potential measures considered by the state, and information and analysis sufficient to support the state's judgment that it has adopted all RACM, including RACT." Moreover, in 40 CFR 51.1010(b), the EPA provided that a state could determine that certain otherwise available control measures are not RACM or RACT for sources in the area if, considered cumulatively, the measures not adopted would not advance the attainment date in the area by at least one year.

The SIP planning requirements under subpart 4 likewise impose upon states an obligation to develop attainment plans that impose RACM and RACT on sources within a nonattainment area. Section 189(a)(1)(C) requires that states with areas classified as moderate nonattainment areas must have SIP provisions to assure that RACM and RACT level controls are implemented by no later than four years after designation of the area. As with subpart 1, the terms RACM and RACT are not defined within subpart 4. Nor do the provisions of subpart 4 specify how states are to meet the RACM and RACT requirements. However, the EPA's longstanding guidance in the General Preamble provides recommendations for appropriate considerations for determining what control measures constitute RACM and RACT for purposes of meeting the statutory requirements of subpart 4.

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[4] The General Preamble acknowledges that states can take into account reductions from existing control requirements. 57 FR 13358, April 16, 1992.

The EPA's existing guidance for RACM and RACT under subpart 4 is comparable to the approach that the EPA set forth in the 2007 $PM_{2.5}$ Implementation Rule. The EPA's guidance for RACM under subpart 4 in the General Preamble includes: (1) A list of some potential measures for states to consider; (2) a statement of the EPA's expectation that the state will provide a reasoned explanation for a decision not to adopt a particular control measure; (3) recognition that some control measures might be unreasonable because the emissions from the affected sources in the area are *de minimis;* (4) an emphasis on state evaluation of potential control measures for reasonableness, considering factors such as technological feasibility and the cost of control; and (5) encouragement that states evaluating potential control measures imposed upon municipal or other governmental entities also include consideration of the impacts on such entities, and the possibility of partial implementation when full implementation would be infeasible (*e.g.*, phased implementation of measures such as road paving). 57 FR 13540, April 16, 1992.

With respect to RACT requirements, the EPA's existing guidance in the General Preamble: (1) Noted that RACT has historically been defined as "the lowest emission limit that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility;" (2) noted that RACT generally applies to stationary sources, both stack and fugitive emissions; (3) suggested that major stationary sources be the minimum starting point for a state's RACT analysis; and (4) recommended that states evaluate RACT not only for major stationary sources, but for other source categories as needed for attainment and considering the feasibility of controls. 57 FR 13540 at 13541, April 16, 1992.

For both RACM and RACT, the EPA notes that an overarching principle is that if a given control measure is not needed to attain the relevant NAAQS in a given area as expeditiously as practicable, then that control measure would not be required as RACM or RACT because it would not be reasonable to impose controls that are not in fact needed for attainment purposes. In both the 2007 $PM_{2.5}$ Implementation Rule interpreting the subpart 1 RACM and RACT requirements and the General Preamble making recommendations for the subpart 4 RACM and RACT requirements, the focus is upon the process to identify emissions sources, to evaluate potential emissions controls, and to impose those control measures that are reasonable and that are necessary to bring the area into attainment as expeditiously as practicable, but by no later than the applicable attainment date for the area. The only exception is if the economically and technically feasible measures not adopted as RACT/RACM will collectively advance attainment by at least a year, then those measures must be adopted in most cases.

In its submitted attainment plan for the Klamath Falls area, the ODEQ addressed the RACM and RACT requirements of subpart 1 as interpreted by the EPA in the remanded 2007 $PM_{2.5}$ Implementation Rule. The EPA proposes to find that the ODEQ RACM and RACT analysis also meets the requirements of subpart 4 as explained in the General Preamble. As described below, the ODEQ evaluated which measures would constitute RACM and RACT in the Klamath Falls area.

1. First, the ODEQ ascertained that control of direct $PM_{2.5}$ emissions was necessary for attainment and that available RACM for direct $PM_{2.5}$ would obviate the need for additional controls for SO_2, NO_X, NH_3, and VOCs, beyond existing federal and state controls, in order to attain the 24-hr $PM_{2.5}$ NAAQS. As described in the Characterization of Klamath Falls Air Shed section above, the ODEQ identified direct $PM_{2.5}$ as the primary pollutant causing violations at the regulatory monitor in Klamath Falls, and was able to show that available RACM for direct $PM_{2.5}$ were sufficient to demonstrate attainment of the 2006 24-hr $PM_{2.5}$ standard by the subpart 1 attainment date of December 2014.

The EPA agrees that there are not additional reasonable controls available to reduce emissions of SO_2, NH_3, VOC, and NO_X that collectively would provide for attainment of the standard by at least one year sooner than provided for in the attainment demonstration. The EPA believes that the ODEQ's assessment of precursors sufficiently demonstrates that adoption of additional precursor controls is not reasonable or necessary for continued attainment of the 2006 $PM_{2.5}$ NAAQS for the subpart 4 requirements.

2. Second, the ODEQ evaluated the relevant emissions sources in the area. The ODEQ's control strategy focused primarily on RACM from "non-point sources" (*i.e.*, area sources) given that analyses showed direct $PM_{2.5}$ from these sources was the main contributor to exceedances of the $PM_{2.5}$ standard. While there was limited ability for controls on $PM_{2.5}$ precursors to advance attainment, this notice shows that there are existing controls on industrial and on road mobile precursor sources. As such, the attainment plan benefits from strategies that have already been considered and enacted and that applied to "point sources" (*i.e.*, major stationary sources), non-road mobile sources, and on-road mobile sources. Major stationary sources are controlled through the ODEQ's permitting programs and the mobile sources have been addressed via national and state measures expected to reduce mobile source emissions through fuel economy standards and vehicle emissions standards including Oregon Low Emission Vehicle regulations (LEV II/ Tier 2 emissions standards). Table 2 provides a chart of certain RACT/RACM implemented for the Klamath Falls area. The table provides the RACT/RACM in two sections: Current Strategies and New Strategies. The current strategies are those that were initiated between 2007–12 and the future strategies are those that were initiated in 2012. All measures are being implemented currently. A full discussion of the RACT/RACM evaluated by the ODEQ is available in the Klamath Falls Attainment Plan.

TABLE 2—RACT/RACM IN KLAMATH FALLS

Emission reduction measure	Sector	Pollutant addressed
Current Strategies (2007–present), currently implemented but not accounted for in the 2008 base year EI		
Residential Wood Combustion:		
Klamath Woodstove Curtailment Program—revised with lower thresholds & increased enforcement (Clean Air Ordinance).	Area	$PM_{2.5}$
Woodstove Change-out Programs	Area	$PM_{2.5}$
Heat Smart program removal of uncertified woodstoves upon sale of home	Area	$PM_{2.5}$
Open Burning: Shortened Open Burning Window (Klamath Clean Air Ordinance)	Area	$PM_{2.5}$
Fuel and Transportation Related:		
Low Emission Vehicle Program	Mobile	SO_X, NO_X
Road Paving	Area	$PM_{2.5}$
Diesel Retrofits	Mobile	$PM_{2.5}$
Fuel Economy	Mobile	SO_X
Industrial Point Sources: Maximum Achievable Control Technology (MACT)—hardboard and particleboard facilities.	Point	$PM_{2.5}$, SO_X
New Strategies (2012–present)		
Residential Wood Combustion:		
Fireplace Standard	Area	$PM_{2.5}$
Public Awareness	Area	$PM_{2.5}$
Industrial Point Sources:		
Opacity, Operation and Maintenance Plan Requirements	Point	$PM_{2.5}$
Offset Requirements	Point	$PM_{2.5}$
Road Dust: Highway Road Sanding practices	Area	$PM_{2.5}$

3. Third, the ODEQ has a demonstrated history of implementation success with respect to particulate matter control strategies. Given that the Klamath Falls area devised control measures to address nonattainment for PM_{10} in the past, the area was already implementing a number of relevant control strategies with demonstrated efficacy. For purposes of attaining the 2006 24-hour $PM_{2.5}$ NAAQS, the ODEQ and Klamath County strengthened some of these existing strategies, which were previously considered RACT/RACM for purposes of attaining the PM_{10} NAAQS, to achieve $PM_{2.5}$ reductions to meet the stricter $PM_{2.5}$ standard (Klamath Falls PM_{10} Attainment Plan—62 FR 18047, April 14, 1997, PM_{10} Maintenance Plan—68 FR 60036, October 21, 2003).

In addition to considering the range of implemented strategies that had effectively controlled emissions to attain the PM_{10} NAAQS, the ODEQ and the Klamath Falls community formed the Klamath Air Quality Advisory Committee (KAQAC) to evaluate and develop additional RACM/RACT at the county level to approve into the Klamath Falls $PM_{2.5}$ attainment plan. The KAQAC and the ODEQ contributed to the formal RACT/RACM analysis of current and future control strategies and provided recommendations to the county commissioners for approval.

The RACT/RACM adopted and updated by the ODEQ for the Klamath Falls area were projected to reduce the 24-hour $PM_{2.5}$ design value by approximately 11.7 µg/m^3 by 2014 (see table 3 below). Accordingly, the plan demonstrated attainment by projecting that the area's design value would be reduced from the 2008 base year design value of 45µg/m^3 to below 35µg/m^3 in 2014. Recent monitoring data for 2012–14 indicate that the plan was effective, reducing the design value to 34 µg/m^3.

TABLE 3—RACT/RACM PROJECTED AIR QUALITY BENEFIT FOR THE KLAMATH FALLS AREA

RACT/RACM	Projected air quality benefit (µg/m^3)
Primary measures:	
Klamath Clean Air Ordinance (updated)	9.6
• Woodstove curtailment—lower thresholds and increased enforcement	
• Shorter open burning window	
Woodstove Change-out Programs	1.0
Heat Smart—woodstove change-out upon sale of home	0.3
Maximum Achievable Control Technology (MACT) particleboard and hardboard	0.1
subtotal 1	*11.0*
Additional measures:	
Public Awareness	0.6
New fireplace standards	0.1
Transportation and Fuel Related Emissions	Minimal.
• Diesel Retrofits	
• Low Emission Vehicle Program	
• Fuel Economy	
Road Paving	Minimal.

TABLE 3—RACT/RACM PROJECTED AIR QUALITY BENEFIT FOR THE KLAMATH FALLS AREA—Continued

RACT/RACM	Projected air quality benefit ($\mu g/m^3$)
subtotal 2	*0.7*
Total	11.7

As seen in Table 3, the most important control strategies address residential wood combustion because the emissions inventory and source-receptor analyses identified residential wood combustion as the most significant contributor to $PM_{2.5}$ at the monitor on days that exceed the standard. The residential wood combustion strategies include an ongoing woodstove change-out program to replace woodstoves with cleaner, more efficient devices, and an updated Klamath Clean Air Ordinance that includes a strengthened woodstove curtailment program to reduce woodstove emissions on days when exceedances of the standard are most likely to occur.

The woodstove change-out program in Klamath Falls has proven effective for meeting the PM_{10} standard and again was selected as a primary RACT/RACM strategy for the $PM_{2.5}$ attainment plan. The program, currently implemented by the City of Klamath Falls, provides financial incentives for homeowners to replace older uncertified woodstoves with newer, cleaner certified woodstoves. Between 2008 and 2011, the change-out program replaced 584 uncertified woodstoves in the area. The removal and destruction of the old woodstoves assures that the emissions reductions are permanent, and the change-outs are enforceable because there is a statewide building code that prohibits the installation of any uncertified woodstove in the future. The 584 uncertified stoves that have been changed out were estimated in the attainment demonstration to collectively provide emission reductions that would lead to an air quality improvement of 1.0 $\mu g/m^3$. The ODEQ intends to continue its financial support of this program in the future for purposes of meeting and maintaining the standard, but it has not taken any credit in the attainment demonstration for future change-outs.

Previous wood burning curtailment programs were important in helping this area attain the 1987 PM_{10} standard and the 1997 $PM_{2.5}$ NAAQS. The Klamath Clean Air Ordinance, updated in 2007 and again in 2012, is the RACM providing the greatest emissions reductions in the attainment demonstration at 9.6 $\mu g/m^3$. The Ordinance includes a curtailment program that restricts combustion in residential solid fuel-fired appliances on yellow and red advisory days when the county's air pollution forecast is for high $PM_{2.5}$ concentrations. The curtailment program is implemented through advisories communicated to the community on a daily basis. On yellow advisory days when the predicted forecast is for a 24-hour average $PM_{2.5}$ between 16 and 30 $\mu g/m^3$, residents within the air quality zone are prohibited from using non-certified woodstoves, non-certified woodstove insert, or a fireplace. Only certified solid fuel-fired appliances and pellet stoves can be used. On red advisory days, called when $PM_{2.5}$ levels are forecast to be above 30 $\mu g/m^3$, the operation of woodstoves is prohibited except in limited cases where Klamath County has granted a prior hardship exemption. Use of pellet stoves are still allowed on red days. The Ordinance also limits open burning of residential yard debris to only 15 days of the winter period. These days are selected based on a forecast of good ventilation. In addition, the ODEQ has committed biennial funding to assist with the County's implementation and enforcement of the strengthened curtailment program (attachments 3.3r1 and 3.3r2). The curtailment program is a permanent and enforceable measure. The program was duly adopted as a Klamath County ordinance and as part of the ODEQ's administrative rules. It imposes restrictions on wood burning when the $PM_{2.5}$ forecast reaches certain thresholds, and establishes clear and enforceable restrictions during yellow and red advisory days.

Together, the woodstove change-out and curtailment programs account for over 95% of the calculated $PM_{2.5}$ emissions reductions (10 $\mu g/m^3$) needed to demonstrate attainment. The implementation of earlier versions of these programs helped Klamath Falls to successfully attain the PM_{10} NAAQS and to meet the 1997 $PM_{2.5}$ NAAQS. The ODEQ's RACT/RACM analyses determined that implementation of the curtailment and woodstove change-out programs as control strategies, in conjunction with other adopted strategies providing minor emissions reductions, would provide for expeditious attainment of the 2006 $PM_{2.5}$ NAAQS.

Additional control strategies, listed in Table 3, include the following: The Oregon Heat Smart program, that requires removal of uncertified woodstoves upon the sale of homes (0.3 $\mu g/m^3$); emissions reductions for implementation of Federal MACT standards establishing tighter opacity standards applicable to hardboard and particle board manufacturers in the nonattainment area (0.1 $\mu g/m^3$); programs to enhance public awareness to ensure effective compliance with the Klamath Air Quality Ordinance and general proper woodstove burning and maintenance (0.6 $\mu g/m^3$); new fireplace standards (0.1 $\mu g/m^3$); emissions reductions from Federal fuel economy standards and state vehicle emissions regulations; and road paving to reduce re-entrained road dust. The public awareness measure is considered a voluntary measure and has been funded annually by the ODEQ for purposes meeting the $PM_{2.5}$ standard. While not a permanent and enforceable measure, the program to enhance education, outreach, and public awareness is key to supporting the implementation of the curtailment including compliance rate and the implementation of the woodstove change-out programs. Details of the intergovernmental agreement between the ODEQ and Klamath County can be found in attachment 3.3s, including the statement of work, funding provided, and performance measures. Further discussion of these ancillary measures can be found in the Klamath Falls Attainment Plan (attachments 3.3a, p28–40; 3.3s).

Existing controls on industrial sources are also implemented within the Klamath Falls nonattainment area. The stationary sources identified in the ODEQ's RACT analysis already had limits in place for direct $PM_{2.5}$ and precursors, due to existing permitted controls or anticipated future controls such as the hardboard and particle board Maximum Achievable Control Technology (MACT 40 CFR part 63 subpart DDDD). As such, the ODEQ assumed no emissions growth for major permitted point sources in the modeling demonstration between 2008 and 2014. For example, Klamath Energy Cogeneration facility is a natural gas fired power plant with selective catalytic reduction (SCR) which limits NO_X emissions. Between the 2008 baseline emissions inventory and the 2014 attainment year inventory, direct $PM_{2.5}$ emissions were predicted to decline from 39.3 to 19.3 tpy, however all precursors were predicted to remain stable due to permit limits (NO_X = 172.2 tpy, SO_2 = 19.5 tpy, VOC = 82.5 tpy, and NH_3 = 68.9 tpy). The Jeld-Wen facility includes a variety of business types such as wood products and chrome plating, with 2014 attainment year inventories of direct $PM_{2.5}$, NO_X, SO_2, VOC, and NH_3 emissions equal to 10.9, 37.6, 1.9, 165.9, and 0.3 tpy, respectively. Direct $PM_{2.5}$ emissions at Jeld-Wen were projected to decline from 17.3 tpy in 2008 to 10.9 tpy in 2014 due to the hardboard and particle board MACT discussed above, but all other precursor emission were projected to remain constant due to existing permit controls. Collins Products is a reconstituted wood products facility that uses primarily natural gas, with 2014 attainment year inventories of direct $PM_{2.5}$, NO_X, SO_2, VOC, and NH_3 emissions equal to 31.0, 9.4, 0.1, 529.8, and 0.0 tpy, respectively. Most of the larger emission units at Collins Products were controlled via fabric filters for particulate matter. The hardboard bake oven was also controlled by a regenerative thermal oxidizer/regenerative catalytic oxidizer for VOC control. Direct $PM_{2.5}$ emissions at Collins Products were projected to decline from 48.4 tpy in 2008 to 31.0 tpy in 2014, also due to the hardboard and particle board MACT, with all precursor emissions projected to remain constant due to existing permit limits. Columbia Forest Products is a plywood manufacturer with 2014 attainment year inventories of direct $PM_{2.5}$, NO_X, SO_2, VOC, and NH_3 emissions equal to 48.9, 53.5, 1.4, 41.2, and 0.3 tpy, respectively. The facility has two wood fired boilers, one of which was equipped with a multiclone for particulate matter control. Direct $PM_{2.5}$ and all precursors were projected by the ODEQ to remain stable between 2008 and the 2014 attainment year inventory due to the existing permit controls.

For on-road mobile sources, in the 2014 attainment year inventory the ODEQ projected significant NO_X emission reductions gained through improved motor vehicle fuel economy and emissions standards, with little opportunity for improvement among the remaining smaller sources. Other secondary species were demonstrated to be minor contributors to $PM_{2.5}$ mass and their emissions are distributed among multiple source sectors. Emissions of NO_X, NH_3, and VOCs are projected to moderately decrease by 2014 due to Federal mobile source controls including the *Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. The ODEQ estimated the on-road emissions reductions due to federal rules (Tier 2) in the attainment year. Additional on-road emission reductions are expected to occur as the fleet continues to turn over and new Tier 3 vehicle and fuel standards are phased in. In July 2000, the EPA issued a *The Heavy-Duty Diesel Engine Rule,* effective in 2004, which includes standards limiting the sulfur content of diesel fuel. A second phase took effect in 2007 which further reduced the highway diesel fuel sulfur content to 15 parts per million, leading to additional reductions in combustion NO_X and VOC emissions. This proposed rule is expected to achieve a 95% reduction in NO_X emissions from diesel trucks and buses. The EPA issued the *Nonroad Diesel Rule* in 2004. This proposed rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this proposed rule will cut NO_X emissions from nonroad diesel engines by up to 90 percent. Some of these emission reductions were projected to occur by the 2014 attainment year with additional emission reductions following attainment.

As shown in table 1, the control strategies included in the attainment plan were projected to provide direct $PM_{2.5}$ projected air quality benefits resulting in an 11.7 μg/m^3 reduction in the 24-hour $PM_{2.5}$ design value, to a 2014 modeled value of 34.6 μg/m^3. The implementation of these control strategies brought the area into attainment of the 2006 $PM_{2.5}$ NAAQS by December 2014. Consistent with the D.C. Circuit Court's decision in *NRDC* v. *EPA,* the control measures identified by the ODEQ as RACM and RACT need to meet the requirements of section 189(a)(1)(C), which requires that all RACM for a Moderate area be implemented by no later than four years after designation. The Klamath Falls area was designated nonattainment on November 13, 2009, and thus according to section 189(a)(1)(C), all necessary RACT/RACM should have been implemented by no later than November 2013. The ODEQ and Klamath County adopted and began implementing the control measures identified as RACM/RACT prior to the submission of the Klamath Falls attainment plan to the EPA in December 2012. Consequently, the EPA believes that the ODEQ complied with the four-year RACT/RACM implementation requirement.

4. Fourth, the ODEQ and the KAQAC identified and evaluated a wide range of additional potential control measures as described in the KAQAC report. The KAQAC report evaluated additional control measures for purposes of determining if they could reasonably provide additional substantive emissions reductions. Between March 2011 and February 2012, the KAQAC met 13 times to review the state of air quality in Klamath Falls and develop recommendations of suggested control measures for approval by the Klamath County Commissioners and incorporation into the ODEQ's attainment plan as RACT/RACM. The KAQAC reviewed 79 control measures and evaluated the measures in light of factors such as environmental, health, economic, social, and technological feasibility. The KAQAC's findings and recommendations are summarized in the ODEQ's Klamath Falls attainment plan and presented in attachments 3.3p–q.

Although the ODEQ and Klamath County considered a wide range of additional strategies, a majority of the strategies were eliminated as not reasonable because they were determined to be technologically or economically infeasible. For this reason, many of these control measures were screened out early in the process through application of the EPA's criteria for determination of RACT/RACM, and were therefore not quantified for purposes of determining if they would advance the attainment date by one year. Given that the area needed to identify 10 μg/m³ of reductions over six years (*e.g.*, 2008 base year to 2014 attainment year) to get from 45 μg/m³ to 35 μg/m³, one year of reductions was roughly 1.67 μg/m³ for the Klamath Falls attainment plan. The remaining control measures were provided by the KAQAC as a set of recommended RACT/RACM for the Klamath County Commissioners to adopt. The final control measures adopted by Klamath County were included in the plan with additional control measures adopted by the ODEQ to satisfy the RACT/RACM planning requirements. The emissions reductions from the implementation of the adopted enforceable measures are sufficient to demonstrate attainment and provide a buffer below the 35 μg/m³ standard.

In the Klamath Falls Attainment Plan (pages 45–47), the ODEQ applied the primary control measures to the base year design value to demonstrate that they would be able to bring the Klamath Falls future design value below the 35 μg/m³ standard. To provide a buffer they also took credit for additional emissions reductions attributed to the new fireplace standards and the education program. Table 3 in this document identifies the measures that the ODEQ identified as necessary to bring the area below the standard as primary measures and these account for approximately 11.0 μg/m³. Table 3 also includes the additional controls that meet the RACM/RACT criteria, listed as additional measures, and shows that they account for approximately 0.7 μg/m³ of emissions reduction. With the information provided in the submittal the EPA identified that these additional measures of 0.7 μg/m³ were not enough to advance the attainment date by one year (*i.e.*, 1.67 μg/m³).

Not Necessary for Attainment

As described in this action, the exceedances at the Peterson School monitor were from direct $PM_{2.5}$, and the main source category responsible for emissions of direct $PM_{2.5}$ was residential wood combustion. In the attainment demonstration, the economically and technologically feasible control measures chosen by the ODEQ focused on reduction of direct $PM_{2.5}$ from residential wood combustion. The two major controls were in the form of strengthening the woodstove curtailment program and the change-out of residential woodstoves with more efficient, lower emissions EPA-certified woodstoves. With these measures, the ODEQ was able to demonstrate attainment by the end of 2014, which the area met based upon quality-assured, quality-controlled, and certified ambient air monitoring data.

Not Possible To Advance Attainment by One Year

Under the attainment plan requirements, an area must implement all reasonably available control measures that would advance the date of attainment by one year, or as expeditiously as possible. In the attainment demonstration submitted in the Klamath Falls attainment plan, the ODEQ identified that the area would attain the standard by December 2014. As the area already attained the 2006 24-hr $PM_{2.5}$ standard in December 2014, attaining as expeditiously as possible is no longer relevant.

The EPA proposes to find that the ODEQ's attainment plan meets the RACM/RACT requirements for the 2006 $PM_{2.5}$ NAAQS. This proposed approval is based upon the State's compliance with the requirements of the general preamble and the EPA's analysis that the submitted attainment plan also meets the statutory RACM and RACT requirements of subpart 4. The plan is consistent with subparts 1 and 4 of the statute, and with the guidance provided in the general preamble, such as identifying relevant sources and potential control measures for those sources, and for evaluating whether potential control measures are reasonable based upon factors such as technological and economic feasibility. Most importantly, under either subpart, the state is required to determine RACM and RACT measures in light of the emissions reductions needed to bring the area in question into attainment.

The EPA proposes to conclude that the ODEQ's attainment plan analysis sufficiently evaluated the relevant sources and controls and appropriately selected RACM/RACT measures that meet the requirements of subparts 1 and 4 and provided for the timely attainment of the 2006 $PM_{2.5}$ NAAQS. The ODEQ identified emissions sources, evaluated potential control measures, and adopted reasonably available control measures consistent with CAA requirements in subparts 1 and 4, and with existing EPA guidance. The ODEQ's attainment plan included sufficient information to determine that implementation of additional precursor controls was unnecessary for timely attainment of the NAAQS. Relying on its selected RACM/RACT, the ODEQ demonstrated attainment with the 2006 $PM_{2.5}$ NAAQS by December 2014. The EPA is proposing to approve the ODEQ's analysis and selection of RACM/RACT as meeting the requirements of subparts 1 and 4.

I. Contingency Measures

Contingency measures are additional measures to be implemented in the event that an area fails to attain a standard by its applicable attainment date, or fails to meet Reasonable Further Progress (RFP). These measures must be fully adopted rules or control measures that take effect without any further action by the state or the EPA. Contingency measures should also contain trigger mechanisms and an implementation schedule. In addition, they should be measures not already included in the SIP control strategy, and should provide for emission reductions equivalent to one year of RFP.

The ODEQ developed contingency measures for the Klamath Falls $PM_{2.5}$ attainment plan in accordance with the contingency measures requirement in section 172(c)(9) of subpart 1 of the CAA (Subpart 4 does not contain contingency measure requirements.) The primary contingency measure in the ODEQ attainment plan is a prohibition on burning in all uncertified fireplaces during the winter wood heating season. This contingency measure was adopted as part of the Klamath County 2012 Ordinance (attachment 3.3r2) and the ODEQ's administrative rules, and the contingency measures automatically take effect without any further action by ODEQ if the area fails to attain by the attainment date. Implementation of the fireplace contingency measure was projected to reduce the future year design value by the one year of RFP reductions (1.67 μg/m³ for Klamath Falls) expected for contingency measures. The EPA proposes to approve the contingency measures in the Klamath Falls attainment plan as meeting the requirements of section 172(c)(9). The contingency measures within the Oregon Administrative Rules (OAR) for proposed approval include 340–240–0570, 340–240–0580, 340–240–0610, 340–240–0620, 340–240–0630, 340–262–1000 and are listed in section V. Incorporation by reference, Table 5.

J. Reasonable Further Progress (RFP) and Quantitative Milestones

For $PM_{2.5}$ nonattainment areas, two statutory provisions apply regarding RFP and quantitative milestones. First, under subpart 1, CAA section 172(c)(2) requires attainment plans to provide for RFP, which is defined in CAA section 171(l) as "such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D of Title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Reasonable further progress is a requirement to assure that states make steady, incremental progress toward attaining air quality standards, rather than deferring implementation of control measures and thereby emission reductions until some time just before the date by which the standard is to be attained. Second, under subpart 4, CAA section 189(c) requires that a PM_{10} NAAQS attainment plan submission have "quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment and which demonstrate reasonable further progress . . . toward attainment by the applicable date."

While the ODEQ's attainment plan was developed to meet the subpart 1 RFP requirements, the EPA is also evaluating the plan to determine whether it meets the subpart 4 quantitative milestones requirement. That section is comparable to the requirements of section 172(c)(1), in that it requires attainment plans under subpart 4 to meet a RFP requirement. However, section 189(c) also provides that an attainment plan should have quantitative milestones which are to be achieved every three years until the area is redesignated to attainment, and which demonstrate reasonable further progress toward attainment by the applicable attainment date. The EPA's General Preamble and Addendum provide guidance interpreting this statutory provision and are useful to evaluate this requirement of subpart 4.[5]

In particular, the EPA's guidance recommendations with respect to section 189(c) include several relevant features: (1) That the control measures comprising the RFP should be implemented and in place to meet the milestone requirement; (2) that it is reasonable for the three year periods for milestones to run from the date that the attainment plan submission is due; and (3) that the precise form quantitative milestones should take is not specified and they may take whatever form would allow progress to be quantified or measured adequately.[6] As discussed below, the EPA believes that the ODEQ's attainment plan adequately meets both the RFP and quantitative milestone requirements for this area for the 2006 24-hour $PM_{2.5}$ NAAQS.

First, although not presented as control measures that would achieve reductions by a specified three year milestone, the ODEQ's attainment plan contained control measures that were already implemented and in place and, in fact, were achieving necessary emission reductions to meet RFP and quantitative milestone requirements. For example, the woodstoves change-out program commenced in 2008 and achieved sustained and quantifiable emission reductions between 2008 and 2011. The ODEQ calculated the emissions reductions associated with the number of woodstoves exchanged in each of those years. In addition, the ODEQ quantified the estimated number of woodstove change-outs resulting from implementation of the Heat Smart program and the associated emissions reductions for each calendar year. These values in turn were relied upon to demonstrate attainment of the 2006 24-hour NAAQS by the attainment date (refer to Table 9 and Table 10 in Attachment 3.3a).

Second, even under the more aggressive 18-month statutory attainment plan due date in subpart 4, the control measures in the ODEQ's attainment plan were in place and achieving reductions within three years of submission. The Klamath Falls area was designated nonattainment in November 2009, and under subpart 4 an attainment plan would have been due in June 2011. As noted in the RACM/RACT discussion (section III.E), the attainment plan consisted of control measures including past strategies implemented prior to 2008 and new strategies implemented after 2012. The past strategies included the woodstove change-out program with emission reductions achieved through implementation in 2008–2011, the Oregon Heat Smart program, and the woodstove curtailment program. While not explicitly identified as quantitative measures in the 2012 ODEQ submission, the state relied upon these primary control measures in the attainment plan to provide the bulk of the emissions reductions needed to bring the area into attainment, and were achieving reductions well within three years from the subpart 4 attainment plan submission date. In addition, there is no need to evaluate whether the attainment plan accounts for a second three-year milestone because the plan demonstrates attainment in December 2014 before the occurrence of the second milestone.

Third, the ODEQ's attainment plan provided information sufficient to quantify the amount of emissions reductions to be achieved by pollutant and control measure by the December 2014 attainment date. The quantification of reductions is found in the emissions inventory table in the attainment plan and emissions inventory, as well as calculated from the emissions reductions associated with each control strategy in the attainment demonstration (Table 3, above). Thus, the attainment plan did quantify the emission reductions that would occur at a point in time that was appropriate for a three year milestone, regardless of what the statutory SIP submission date was under either subpart 1 or subpart 4. The ODEQ's attainment plan contained control measures that achieved annual emissions reductions and associated air quality improvements between the time of the nonattainment designation and the time the area attained the standard that are sufficient to demonstrate RFP under subpart 1. The timely implementation of these control measures may be viewed as satisfying the quantitative milestone requirements that apply under subpart 4.

The EPA proposes to approve the submitted Klamath Falls attainment plan as meeting both the RFP and quantitative milestone requirements. The plan provides sufficient data and analyses that demonstrate emission reductions that provide reasonable progress towards attainment in December 2014. The key control strategies for attainment were implemented and achieving emissions reductions prior to the attainment plan due date under subpart 4 and within the three-year quantitative milestone requirement. This is consistent with the purpose of the milestone requirement which is to "provide for emission reductions adequate to achieve the standards by the applicable attainment date" (H.R. Rep. No. 480, 101st Cong. 2d Sess. 267 (1990)). The ODEQ demonstrated progress toward attainment in December 2014 and successfully implemented the control measures expected to achieve the NAAQS by this date. Furthermore, since Klamath Falls has attained the 2006 $PM_{2.5}$ NAAQS by the demonstrated date, this provides further support that RFP and quantitative milestones were being met at the appropriate time.

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[5] *See* General Preamble, 57 FR 13539, April 16, 1992; Addendum, 59 FR 42015–17, August 16, 1994.

[6] Merely as examples, EPA noted some potential approaches, such as percent implementation of control strategies, percent compliance with implemented control measures, and adherence to a compliance schedule. This list was clearly not exhaustive and reflected that the purpose of such milestones is merely to provide an objective way to assess that the area is making progress towards attainment by the applicable attainment date. *See* Addendum, 59 FR 42016, August 16, 1994.

K. Conformity Requirements

Transportation Conformity and the Motor Vehicle Emissions Budget (MVEB)

Section 176(c) of the CAA requires Federal actions in nonattainment and maintenance areas to "conform to" the goals of SIPs. This means that such actions will not cause or contribute to violations of a NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the national transportation conformity rule (40 CFR part 93, subpart A) as well as the Oregon transportation conformity SIP which cites the national rule (77 FR 60627, October 4, 2012). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, the EPA, and the FHWA and FTA to demonstrate that their long-range transportation plans ("plans") and transportation improvement programs (TIPs) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (budgets) contained in a SIP.

TABLE 4—2014 MOTOR VEHICLE EMISSIONS BUDGETS FOR KLAMATH FALLS

Inventory	$PM_{2.5}$	NO_X
Worst Case Winter $PM_{2.5}$ Season	699 lbs/day	4,834 lbs/day

For motor vehicle emissions budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria (40 CFR 93.118(e)(4)). The EPA has reviewed the motor vehicle emissions budgets listed above in Table 4 and found that they are consistent with the attainment of the 2006 24-hour $PM_{2.5}$ NAAQS and meet the criteria for adequacy and approval. The EPA found the budgets located in Table 4 adequate (80 FR 45654; July 31, 2015). The EPA proposes to approve Oregon's MVEBs in Table 4 for 2014 for the 24-hour $PM_{2.5}$ NAAQS for the Klamath Falls nonattainment area. As a clarification, only the 2014 MVEB in the submittal is applicable to the attainment plan and only the 24-hour budget will be used for conformity purposes. As such, the EPA believes that these motor vehicle emissions meet applicable requirements for such budgets for purposes of the 2006 24-hour $PM_{2.5}$ NAAQS for transportation conformity purposes.

M. Klamath Falls Exceptional Event Demonstration and Concurrence

The CAA allows for the exclusion of air quality monitoring data from design value calculations when there are exceedances caused by events, such as wildfires, that meet the criteria for an exceptional event identified in the EPA's implementing regulations, the Exceptional Events Rule at 40 CFR 50.14. Emissions from wildfires influenced $PM_{2.5}$ concentrations recorded at the Klamath Falls Peterson School monitor on September 30, 2009; August 25, 28 and 31, 2012; and July 30 and August 5, 2013. The ODEQ submitted an exceptional events demonstration for the 2009 wildfire with which the EPA concurred on June 29, 2012. The 2009 event had regulatory significance for purposes of the attainment demonstration in the ODEQ's Klamath Falls attainment plan submittal. The ODEQ also submitted an exceptional events demonstration for the 2012 and 2013 wildfires with which the EPA concurred on February 18, 2015. The exclusion of data influenced by the 2012 and 2013 wildfires affected the design value for 2012–2014. Further details on the ODEQ's analyses and the EPA's concurrences can be found in the docket for this regulatory action. The EPA proposes to approve all of the concurred dates listed above as detailed in the docket as exceptional events to be removed from the data set used for regulatory purposes and to rely on the calculated values that exclude the event-influenced data in this proposed finding of attainment for the 2006 $PM_{2.5}$ NAAQS.

IV. Proposed Action

The EPA proposes to find that the Klamath Falls area attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date. The EPA proposes to approve the $PM_{2.5}$ attainment plan for the Klamath Falls nonattainment area. As explained above, the EPA believes that the attainment plan submitted by Oregon, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of subpart 4. Specifically, the attainment plan included a weight of evidence demonstration that the area would attain by the statutory attainment date that applied under a subpart 1 regime and a full year before the latest allowable subpart 4 moderate area attainment date. In addition, the plan meets the substantive requirements applicable under subparts 1 and 4 for RACM/RACT, base-year emissions inventories, RFP and quantitative milestones, and contingency measures. The plan also included MVEBs to be used for transportation conformity purposes for Klamath Falls. Accordingly, the EPA is proposing to determine that the SIP meets applicable requirements for purposes of approval under section 110(k) of the CAA. The EPA also proposes to approve the rules submitted and the exceptional event demonstration discussed in this action. Finally, we propose to determine that the area has clean data based on quality-assured and quality-controlled 2012–2014 ambient air monitoring data for the 2006 24-hour $PM_{2.5}$ NAAQS. As provided in 40 CFR 51.1004(c), if the EPA finalizes this determination, it will suspend the requirements for the area to submit an attainment demonstration, associated RACM, RFP, contingency measures, and any other planning SIP requirements related to the attainment of the 2006 $PM_{2.5}$ NAAQS, so long as the area continues to meet the standard. Although a CDD suspends the requirement for submission of certain attainment planning elements, it does not relieve the EPA of its responsibility to take action on a state's SIP submission. As described in this action, the EPA is proposing to fully approve the remaining elements of the Klamath Falls nonattainment plan as meeting the requirements of the CAA.

V. Incorporation by Reference

The EPA is proposing to approve regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules described in this preamble and listed in Table 5 below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

TABLE 5—PROPOSED RULES FOR INCORPORATION BY REFERENCE
[EPA approved Oregon Administrative Rules (OAR)]

State citation	Title/Subject	State effective date	EPA approval date	Explanations
Division 240—Rules for Areas with Unique Air Quality Needs				
Klamath Falls Nonattainment Area Contingency Measures				
240–0570	Applicability	12/11/2012		
240–0580	Existing Industrial Sources Control Efficiency	12/11/2012		
240–0610	Continuous Monitoring for Industrial Sources	12/11/2012		
240–0620	Contingency Measures: New Industrial Sources	12/11/2012		
240–0630	Contingency Enhanced Curtailment of Use of Solid Fuel Burning Devices and Fireplaces.	12/11/2012		
Division 262—Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices				
262–1000	Wood Burning Contingency Measures for $PM_{2.5}$ Nonattainment Areas.	12/11/2012		

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply on any Indian reservation land in Oregon or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 1, 2016.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2016–08384 Filed 4–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2015–0388; FRL–9944–43]

RIN 2070–AB27

Significant New Use Rule on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for three chemical substances which were the subject of premanufacture notices (PMNs). This action would require persons who intend to manufacture (defined by statute to include import) or process any of the chemical substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit the activity before it occurs.

DATES: Comments must be received on or before May 13, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0388, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention

and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

Manufacturers (including importers) or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance to a proposed or final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) for three chemical substances which were the subject of PMNs P–15–221, P–15–247, and P–15–278. These SNURs would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity. In accordance with the procedures at § 721.160(c)(3)(i), in the **Federal Register** publication of October 2, 2015 (80 FR 59583) (FRL–9933–30) EPA issued direct final SNURs on these chemical substances, which are the subject of PMNs. EPA received notices of intent to submit adverse comments on these SNURs. Therefore, as required by § 721.160(c)(3)(ii), EPA withdrew the direct final SNURs in the **Federal Register** of November 20, 2015 (80 FR 72592) (FRL–9936–98), and is now issuing this proposed rule on these three chemical substances. The records for the direct final SNURs on these three chemical substances were established as docket EPA–HQ–OPPT–2015–0388. Those records include information considered by the Agency in developing the direct final rule. While notices of intent to submit adverse comments were received during the direct final rule phase, no substantive comments were submitted. EPA awaits the adverse comments during the open comment period for this proposed rule.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for three chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (assigned for non-confidential chemical identities).
- Public comments and EPA's response to comments on the three direct final SNURs
- Basis for the TSCA non-section 5(e) SNURs (*i.e.,* SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VII. for more information).
- CFR citation assigned in the regulatory text section of this proposed rule.

The regulatory text section of this proposed rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this proposed rule, may be claimed as CBI.

PMN Number P–15–221

Chemical name: Isocyanate prepolymer (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as ingredient in an industrial adhesive. Based on Structure Activity Relationship (SAR) analysis of test data on analogous diisocyanates, EPA identified concerns for irritation and sensitization to the skin and lungs. As described in the PMN, EPA does not expect significant occupational dermal or inhalation exposure due to use of adequate personal protective equipment and consumer exposures are not expected as the PMN substance is not used in consumer products. Therefore, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a National Institute for Occupational Safety and Health (NIOSH)-certified particulate respirator with an Assigned Protection Factor (APF) of at least 10 where there is a potential for inhalation exposure, or any use in consumer products may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day subchronic inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR Citation: 40 CFR 721.10871.

PMN Number P–15–247

Chemical name: Methylene diisocyanate polymer with diols and triols (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an industrial adhesive. Based on SAR analysis of test data on analogous diisocyanates, EPA identified concerns for respiratory and dermal sensitization and lung and mucous membrane irritation based on the isocyanate moiety. As described in the PMN, EPA does not expect significant occupational dermal or inhalation exposure due to use of adequate personal protective equipment and consumer exposures are not expected as the PMN substance is not used in consumer products. Therefore, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10 where there is a potential for inhalation exposure, or any use in consumer products, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day subchronic inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR Citation: 40 CFR 721.10873.

PMN Number P–15–278

Chemical name: Polymer of isophorone diisocyanate and amine-terminated propoxylatedpolyol (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a crosslinker. Based on analogous diisocyanates, EPA identified concerns for potential dermal and respiratory sensitization from dermal and inhalation exposures and for pulmonary toxicity from inhalation exposure to the PMN substance when the average molecular weight is below 2,500 daltons and any molecular weight species below 1,000 daltons is present. EPA does not expect significant exposures from the form of the PMN substance as described in the PMN. Therefore, EPA has not determined that the proposed manufacture of the substance may present an unreasonable risk. EPA has determined, however, that any manufacture of the PMN substance with an average molecular weight of below 2,500 daltons and with any molecular weight species below 1,000 daltons may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day subchronic inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR Citation: 40 CFR 721.10874.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA determined that one or more of the criteria of concern established at § 721.170 were met. For additional discussion on these chemical substances, see Units II. and IV. of this proposed rule.

B. Objectives

EPA is proposing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

- EPA would receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA would be able to regulate prospective manufacturers or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *https://www.epa.gov/tsca-inventory*.

VI. Applicability of the Proposed Rule to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. The identities of the three chemical substances subject to this proposed rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per §§ 720.25 and 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

Therefore, EPA designates April 13, 2016 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 (55 FR 17376) for a more detailed discussion of the cutoff date for ongoing uses.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).
2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Guidelines for Pesticides and Toxic Substances."

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/how-submit-e-pmn*.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule, during the development of the direct final rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2015–0388.

X. Statutory and Executive Order Reviews

A. Executive Order 12866

This proposed rule would establish SNURs for three chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *"Regulatory Planning and Review"* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this proposed rule have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This proposed rule would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
2. The SNUR submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this proposed rule.

This proposed rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit IX. And EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This proposed rule would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

G. Executive Order 13045

This proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this proposed rule does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because this proposed rule is not expected to affect energy supply, distribution, or use and because this proposed rule is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this proposed rule would not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), would not apply to this proposed rule.

J. Executive Order 12898

This proposed rule does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 6, 2016.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add § 721.10871 to subpart E to read as follows:

§ 721.10871 Isocyanate prepolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanate prepolymer (PMN P–15–221) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 3. Add § 721.10873 to subpart E to read as follows:

§ 721.10873 Methylene diisocyanate polymer with diols and triols (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methylene diisocyanate polymer with diols and triols (PMN P–15–247) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.*, enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.*, workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 4. Add § 721.10874 to subpart E to read as follows:

§ 721.10874 Polymer of isophorone diisocyanate and amine-terminated propoxylatedpolyol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of isophorone diisocyanate and amine-terminated propoxylatedpolyol (PMN P–15–278) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. The significant new use is manufacture of the substance where the average molecular weight is below 2,500 daltons and where any molecular weight species is below 1,000 daltons.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2016–08511 Filed 4–12–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 71
Wednesday, April 13, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest; Fortine Ranger District; Montana; Ten Lakes Travel Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This project includes specific changes to existing over-snow motorized and non-snow mechanized transport (including bicycles) on public access routes (roads and trails), areas, and prohibitions within the Ten Lakes Travel Management Project area.

DATES: Comments concerning the scope of the analysis must be received 30 days from the date of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected May of 2016 and the final environmental impact statement is expected August of 2016.

ADDRESSES: Send written comments to Project Leader Amanda Villwock, Eureka Ranger Station, 949 US Hwy 93 N, Eureka, MT 59917. Comments may also be sent via email to *comments-northern-kootenai-fortine@fs.fed.us* or via facsimile to 406–296–7188.

FOR FURTHER INFORMATION CONTACT: Amanda Villwock, Project Leader, at 406–296–7145 or *avillwock@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this project is to develop a travel management plan (winter and summer) for the Ten Lakes Wilderness Study Area (WSA) to comply with the terms of the 2007 Settlement Agreement with the Montana Wilderness Association and to maintain wilderness character and the potential for inclusion in the National Wilderness Preservation system that existed in 1977. The project boundary contains the WSA and adjacent areas that are common entrance points to the WSA.

Proposed Action

Alternative 2, the Proposed Action, includes summer and winter travel management. This includes over-snow vehicle travel and non-snow trail management (mechanized and non-mechanized).

Over-snow vehicle travel contains two distinct seasons. Season 1 (December 1–March 31) proposes to allow over-snow vehicle travel on 36,700 acres and 51.6 miles of designated over-snow motorized routes. Approximately 15,840 of those acres are within the WSA, or 46 percent of the WSA. Season 2 (April 1–May 31) proposes to allow over-snow vehicles on 43.2 miles of designated motorized over-snow vehicle routes, with no travel off designated routes. No travel would occur within the WSA.

Northern Region Forest Service Manual Supplement No. 2300–2008–1, section 2329 (Management of Wilderness Study Areas) states that mountain bikes may be allowed on trails that had established motor bike use in 1977, or on other non-motorized trails as long as the aggregate amount of mountain bike use maintains the wilderness character of the WSA as it existed in 1977 and maintains potential for inclusion in the National Wilderness Preservation System. In 1977, 15.9 miles of trail in the area that would become the WSA were open to motorized vehicles yearlong. Thus, manual direction could allow for some mechanized use in the WSA.

Non-snow trail management proposes 20.3 miles of trail available for mechanized use, or 24% of the project area, with 8.7 miles of trail within the WSA. All trails will allow non-motorized and non-mechanized uses like hiking and horses. No non-snow motorized use is proposed.

Responsible Official

The Responsible Official is the Fortine District Ranger.

Nature of Decision To Be Made

The framework for the Decision includes determining the appropriate routes and areas of over-snow motorized and non-snow mechanized use in the Ten Lakes WSA, that will maintain its wilderness character and the potential for inclusion in the National Wilderness Preservation system as they existed in 1977. Decisions made outside of the WSA are relative to common access points to the WSA and how they effect levels of use and enforcement in the WSA.

Preliminary Issues

Issues identified by the interdisciplinary team and scoping comments include effects to wilderness character as it existed in 1977, effects to the local economy, effects to the human environment, and effects to wildlife from motorized use.

Scoping Process

This notice of intent initiates a second scoping process, which guides the development of the environmental impact statement. Scoping occurred in April of 2015, with a letter and information about the Proposed Action sent to interested parties. Comments received led to the development of the Alternatives and the decision to analyze the project in an environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: April 1, 2016.

Bryan L. Donner,

District Ranger.

[FR Doc. 2016–08420 Filed 4–12–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Central Idaho Resource Advisory Committee (RAC) will meet in Jerome, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://fs.usda.gov/Sawtooth.*

DATES: The meeting will be held on May 11, 2016, from 9:00 a.m. to 3:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Idaho Department of Fish and Game, 324 South 417 East, Jerome, Idaho.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Sawtooth National Forest Supervisors Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Thomas, Designated Federal Officer, by phone at 208–737–3262 or via email at *jathomas@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. Oral presentations from individuals or groups proposing projects for funding;
2. A question and answer period for proponents; and
3. Reports from other projects presented at the end of the day.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by April 18, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Julie Thomas, Designated Federal Officer, Sawtooth National Forest Supervisors Office 2647 Kimberly Road East, Twin Falls, Idaho, 83301; by email to *jathomas@fs.fed.us,* or via facsimile to 208–737–3236.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: April 7, 2016.

Sarah Lau,

Acting Forest Supervisor.

[FR Doc. 2016–08460 Filed 4–12–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

[Docket No. 160223139–6139–01]

Privacy Act of 1974; Amended System of Records

AGENCY: National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Notice of Proposed Amendment to Privacy Act System of Records and Deletion of a System of Records: COMMERCE/NIST–1, NIST Associates.

SUMMARY: This notice announces the Department of Commerce's (Department's) proposal to amend and combine the systems of records entitled "COMMERCE NBS–1" and "COMMERCE NBS–3" into the system of records entitled "NIST–1, NIST Associates." The National Institute of Standards and Technology (NIST) is amending these systems of records to combine and update these two prior SORNs, and to facilitate the processing, tracking, management, planning, control, support of, and reporting about NIST Associates (NA) during their tenure at NIST. The system of records entitled "COMMERCE/NBS–3, Research Associates," will be abolished upon final publication of the **Federal Register** notice for the newly amended and renamed system of records entitled "COMMERCE/NIST–1, NIST Associates." The system of records entitled "COMMERCE/NBS–1, Guest Workers" is being amended to create the system of records entitled "NIST–1, Research Associates." We invite public comment on the system amendment announced in this publication.

DATES: To be considered, written comments must be submitted on or before May 13, 2016. Unless comments are received, the amended system of records will become effective as proposed on May 23, 2016. If comments are received, the Department will publish a subsequent notice in the **Federal Register** within 10 days after the comment period closes, stating that the current system of records will remain in effect until publication of a final action in the **Federal Register**.

ADDRESSES: Comments may be mailed to: Director, Management and Organization Office, NIST, 100 Bureau Drive-Stop 1710, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Director, Management and Organization Office, National Institute of Standards and Technology, 100 Bureau Drive-Stop 1710, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: NAs can be either a domestic or foreign associate. A domestic associate is any non-NIST employee who is a U.S. citizen, comes to a NIST campus and/or uses NIST information technology resources, and is either working in a lab (for any period of time) or will be on campus for more than ten working days. A foreign associate is any technically qualified person who is not a U.S. citizen and is sponsored by an organization other than NIST, or is self-employed, or is working at NIST under the auspices of a NIST funding agreement (contract, grant, cooperative agreement, or simplified acquisition), and collaborates with NIST on research projects and/or technical activities of mutual interest. A foreign associate may be an employee of a foreign government agency, federal, state, or local government agency, for-profit company, non-profit organization (including a college or university), or be a postgraduate researcher or graduate student, or be self-employed.

COMMERCE/NIST–1

SYSTEM NAME:

COMMERCE/NIST–1, NIST Associates

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations where the primary records are maintained:

- Domestic Guest Researcher (DGR) Records-NIST Technology Partnerships Office (TPO), 100 Bureau Drive, Gaithersburg, MD 20899.
- Foreign Guest Researcher (FGR) Records-NIST International and Academic Affairs Office (IAAO), 100 Bureau Drive, Gaithersburg, MD 20899.
- NIST Research Experience for Teachers (RET) Records-NIST International and Academic Affairs Office (IAAO), 100 Bureau Drive, Gaithersburg, MD 20899.
- Facility User (FU) Records-NIST Center for Neutron research, 100 Bureau Drive, Gaithersburg, MD 20899.
- Research Associates (RA) Records as listed on Cooperative Research and Development Agreements (CRADA)-NIST Technology Partnerships Office, 100 Bureau Drive, Gaithersburg, MD 20899.
- Sole Proprietorship Contractors (SPC)-NIST Office of Acquisition Agreements Management, 100 Bureau Drive, Gaithersburg, MD 20899.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals not employed by NIST but having access to NIST facilities under various cooperative, collaborative, and contractual agreements. These include but in the future may not be limited to Foreign and Domestic Guest Researchers, Research Associates, Facility Users, Contractor Employee Personnel, Sole Proprietorship Contractors, Employees of Other Government Agencies, Student Program Participants, and other Collaborators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Agreements between NIST and NAs. Typical data also includes but is not limited to name, address, date of birth, social security number, personal contact information, email address, telephone numbers, other names, education, visa and passport information, work location, financial and pay data, project descriptions, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

27 Stat. 395 and 31 Stat. 1039, and all existing, applicable NIST and Department policies, regulations and directives concerning the tracking, security processing, and support of NAs during their tenure at NIST.

PURPOSES:

The purpose is to facilitate the processing, tracking, management, planning, control, support of and reporting about NAs during their tenure at NIST.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the Department as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed, as a routine use, to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

6. A record in this system of records which contains medical information may be disclosed, as a routine use, to the medical advisor of any individual submitting a request for access to the record under the Act and 15 CFR part 4b if, in the sole judgment of the Department, disclosure could have an adverse effect upon the individual, under the provision of 5 U.S.C. 552a(f)(3) and implementing regulations at 15 CFR part 4b.

7. A record in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

9. A record in this system of records may be disclosed, as a routine use, to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

10. A record in this system may be transferred, as a routine use, to the Office of Personnel Management: for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

11. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services Administration (GSA), or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and § 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Department) directive. Such

disclosure shall not be used to make determinations about individuals.

12. A record in this system of records may be disclosed to appropriate agencies, entities and persons when: (1) It is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or whether systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

NA information is stored and maintained in electronic form in system folders and/or databases, within a controlled environment with access restricted to authorized personnel (see Safeguards below for full list of those with access to system).

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Privacy Act data, *i.e.,* data defined by and protected under the Privacy Act of 1974 (5 U.S.C. 552a), is maintained in the NIST Associate Information System (NAIS) as distinct and separate from non-Privacy Act data in that it cannot be accessed or retrieved except by authorized personnel with a mission-related need-to- know. Access to NAIS Privacy Act data by NIST staff must be authorized by the NAIS System-of-Records Manager on a mission-related, need-to-know basis. Levels of access to NAIS Privacy Act data as well as access itself are controlled by the NAIS privacy/security/system access architecture that is implemented through "report writer" software.

Levels of access to NAIS Privacy Act data are granted to individuals based on NA processing roles and responsibilities that define specific mission-related needs-to-know. Included in these roles and responsibilities are the following:

a. Initiators—those creating and inputting new data records.

b. Approving Officials—those signing off on NA agreements.

c. Reviewing Officials—those reviewing NA agreements but not signing off.

d. Records Updaters—those directed to update or correct information in NA records.

Physical security and IT security of the NAIS IT assets is assured by all relevant NIST policies and procedures that are applicable to the e-Approval infrastructure of which NAIS is an IT application.

RETENTION AND DISPOSAL:

Current NIST and Department policies and regulations concerning the retention and disposition of Privacy Act data apply.

SYSTEM MANAGER(S) AND ADDRESSE(S):

- For DGRs and RAs, the System Manager will be appointed by the Director, NIST Technology Partnerships Office (TPO) from TPO staff. DGR agreements (NIST–1296) are maintained by the Office of Human Resource Management Onboarding Office, 100 Bureau Drive, Gaithersburg, MD 20899.
- For FGRs and all other foreign NAs, the System Manager will be appointed by the Director, NIST International and Academic Affairs Office (IAAO) from IAAO staff, 100 Bureau Drive, Gaithersburg, MD 20899.
- For all Contractor Employees and SPCs, the Associate Director for Management Resources (ADMR) is the System Manager; the ADMR may delegate this duty to a staff member, 100 Bureau Drive, Gaithersburg, MD 20899.
- For FU Records, the System Manager is the Director for the NIST Center for Neutron Research, 100 Bureau Drive, Gaithersburg, MD 20899.
- For Employees of Other Government Agencies, the System Manager is the Director, Office of Human Resources Management, 100 Bureau Drive, Gaithersburg, MD 20899.
- For Student Program Participants, depending upon the program, the System Manager is the Director, Office of Human Resources Management, 100 Bureau Drive, Gaithersburg, MD 20899.
- For RETs Records, the System Manager is NIST International and Academic Affairs Office (IAAO), 100 Bureau Drive, Gaithersburg, MD 20899

NOTIFICATION PROCEDURE:

Information may be obtained from the Director, Management and Organization Office, NIST, 100 Bureau Drive-Stop 1710, Gaithersburg, MD 20899.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the same address provided in the Notification Procedure above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting content, and for appealing initial determinations by the individuals concerned appear in 15 CFR part 4b. Use same address provided in the Notification Procedure above.

RECORD SOURCE CATEGORIES:

Information that may be entered into the NAIS will come from the subject individuals and those authorized by these individuals to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 6, 2016.

Michael J. Toland,

Department of Commerce, Freedom of Information and Privacy Act Officer.

[FR Doc. 2016–08513 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The teleconference meeting is scheduled for Tuesday, May 3, 2016, at 3:00 p.m. Eastern Daylight Time (EDT). Please register by 5:00 p.m. EDT on Friday, April 29, 2016 to listen in on the teleconference meeting.

ADDRESSES: The meeting will be held via teleconference. For logistical reasons, all participants are required to register in advance by the date specified above. Please contact Ms. Maureen Hinman at the contact information below to register and obtain call-in information.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Hinman, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230 (Phone: 202–482–0627; Fax: 202–482–5665; email: *maureen.hinman@trade.gov.*)

SUPPLEMENTARY INFORMATION: The meeting will take place from 3:00 p.m. to 4:30 p.m. EDT. The general meeting is open to the public and time will be permitted for public comment from 4:00–4:30 p.m. EDT. Those interested in attending must provide notification by Friday, April 29, 2016 at 5:00 p.m. EDT, via the contact information provided above. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 90 days of this meeting.

Topics to be considered: The agenda for this meeting will include review and approval of ETTAC recommendations for the 2014—2016 charter period.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until August 2016.

Dated: April 6, 2016.

Edward A. O'Malley,

Office Director, Office of Energy and Environmental Industries.

[FR Doc. 2016–08408 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Manufacturing Council: Renewal of the Manufacturing Council Charter

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of charter renewal.

SUMMARY: On March 25, 2016, the Department of Commerce Chief Financial Officer and Assistant Secretary for Administration renewed the charter for the Manufacturing Council (Council) for a two-year period, ending March 24, 2018. The Council is a federal advisory committee under the Federal Advisory Committee Act (5 U.S.C. App. 2).

FOR FURTHER INFORMATION CONTACT: Archana Sahgal, Director, ITA Office of Advisory Committees and Industry Outreach, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *oacio@trade.gov.*

SUPPLEMENTARY INFORMATION: The Manufacturing Council (Council) was established by the Secretary of Commerce (Secretary) pursuant to duties imposed by 15 U.S.C. 1512 upon the Department, in compliance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., and with the concurrence of the General Services Administration. In renewing the Council, the Department affirms that the advisory committee is necessary and in the public interest.

The Council shall identify and recommend ways for the U.S. Government to respond to the challenges facing United States manufacturers and shall identify and recommend programs and policies to help United States manufacturers maintain competitiveness both at home and abroad.

The Council functions solely as an advisory committee in accordance with the provisions of FACA. In particular, the Council shall advise the Secretary on government policies and programs that affect United States manufacturing and provide a means of ensuring regular contact between the U.S. Government and the manufacturing sector. The Council shall act as a liaison among the stakeholders represented by the membership, and may provide a forum for those stakeholders on current and emerging issues in the manufacturing sector. The Council shall recommend ways to ensure that the United States remains the preeminent destination for investment in manufacturing throughout the world.

The Council shall report to the Secretary on its activities and recommendations regarding United States manufacturing. In creating the reports, the Council should: Survey and evaluate the manufacturing activities of the stakeholders represented by the membership; identify and examine specific problems facing the manufacturing industry; examine the needs of the industry to expand the Council's efforts; and recommend specific solutions to these problems and needs.

Additional information regarding the Council is available at *http://www.trade.gov/manufacturingcouncil/.*

Dated: March 29, 2016.

Archana Sahgal,

Director, Office of Advisory Committees and Industry Outreach.

[FR Doc. 2016–08489 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 7, 2015, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review and new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (the PRC).[1] The period of review (POR) for the administrative review and the new shipper reviews is September 1, 2013, through August 31, 2014. These reviews cover five producers/exporters of subject merchandise: China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Deyan Aquatic Products and Food Co., Ltd. (Deyan Aquatic), Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean), Hubei Yuesheng Aquatic Products Co., Ltd. (Hubei Yuesheng), and Weishan Hongda Aquatic Food Co., Ltd., (Hongda). We invited parties to comment on the *Preliminary Results.* Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, these final results differ from the *Preliminary Results.* The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled

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[1] *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013–2014,* 80 FR 60624 (October 7, 2015) (*Preliminary Results*). Also, on November 21, 2014, in accordance with 19 CFR 351.214(j)(3), the Department aligned the new shipper review with the administrative review. *See* Memorandum to the File entitled "Alignment of New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China with the concurrent administrative review of Freshwater Crawfish Tail Meat from the People's Republic of China" dated November 21, 2014.

"Final Results of the Administrative Review and New Shipper Reviews."

DATES: *Effective Date:* April 13, 2016.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2013, the Department published the *Preliminary Results* of these reviews. On January 6, 2016, we issued a memorandum extending the time limit for the final results of these reviews to April 4, 2016.[2] As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government in January 2016. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results of these reviews is now April 8, 2016.[3]

The Department gave interested parties an opportunity to comment on the *Preliminary Results*. We received case briefs from the petitioners, the Crawfish Processors Alliance (CPA), and Hongda on November 6, 2015. We received a rebuttal brief from Hongda on November 12, 2015. Pursuant to a request from CPA, we held a public hearing on February 11, 2016.[4]

We conducted these reviews in accordance with sections 751(a)(1)(B) and 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the antidumping duty order is freshwater crawfish tail meat, which is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 1605.40.10.10, 1605.40.10.90, 0306.19.00.10, and 0306.29.00.00. On February 10, 2012, the Department added HTSUS classification number 0306.29.01.00 to the scope description pursuant to a request by U.S. Customs and Border Protection (CBP). The HTSUS numbers are provided for convenience and customs purposes only. The written description of the scope is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum,[5] which is hereby adopted by this notice.

Analysis of Comments Received

All issues raised in the case briefs by parties to these reviews are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance Web site at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic versions are identical in content.

Final Results of the Administrative Review and New Shipper Reviews

For the final results of the administrative review, we determine that the following percentage weighted-average dumping margins exist for the period September 1, 2013, through August 31, 2014:

Producer/exporter	Weighted average dumping margin (percent)
China Kingdom (Beijing) Import & Export Co., Ltd	22.16
Deyan Aquatic Products and Food Co., Ltd	12.04
Shanghai Ocean International International Trading Co., Ltd	17.23

For the final results of the new shipper reviews, the Department determines that a dumping margin of 42.45 percent exists for merchandise produced and exported by Hubei Yuesheng Aquatic Products Co., Ltd. and a dumping margin of 26.10 percent exists for merchandise produced and exported by Weishan Hongda Aquatic Food Co., Ltd., covering the period September 1, 2013, through August 31, 2014.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews.[6] In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific (or customer-specific) assessment rates for merchandise subject to these reviews.

For these final results, we divided the total dumping margins (calculated as the difference between normal value and export price) for each of the respondents' importers or customers by the total number of kilograms the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-kilogram dollar amount against each kilogram of merchandise in each of that importer's/customer's entries during the review period.

For entries that were not reported in the U.S. sales databases submitted by companies individually examined during these reviews, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. We intend to issue assessment instructions to CBP 15 days after the date of publication of these final results of reviews.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the companies listed above, the cash deposit rate will be the rate established in the final results of the administrative review for each exporter as listed above, except if the rate is zero or *de minimis,* then no cash deposit will be required for that exporter; (2) for previously investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the investigation; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 223.01 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC entity that supplied that non-PRC exporter.

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[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Freshwater Crawfish Tail Meat from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013–2014," dated January 6, 2016.

[3] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

[4] *See* Public Hearing Transcript concerning the Administrative and New Shipper Reviews of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China (February 11, 2016).

[5] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review and New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China" dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

[6] *See* 19 CFR 351.212(b)(1).

With respect to Hubei Yuesheng, a respondent in the new shipper review, the Department established a combination cash deposit rate for this company consistent with its practice, as follows: (1) For subject merchandise produced and exported by Hubei Yuesheng the cash deposit rate will be the rate established in the final results of the new shipper review; (2) for subject merchandise exported by Hubei Yuesheng, but not produced by Hubei Yuesheng, the cash deposit rate will be the rate for the PRC-wide entity; and (3) for subject merchandise produced by Hubei Yuesheng, but not exported by Hubei Yuesheng, the cash deposit rate will be the rate applicable to the exporter.

With respect to Hongda, a respondent in the new shipper review, the Department established a combination cash deposit rate for this company consistent with its practice, as follows: (1) For subject merchandise produced and exported by Hongda the cash deposit rate will be the rate established in the final results of the new shipper review; (2) for subject merchandise exported by Hongda, but not produced by Hongda, the cash deposit rate will be the rate for the PRC-wide entity; and (3) for subject merchandise produced by Hongda, but not exported by Hongda, the cash deposit rate will be the rate applicable to the exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed regarding these final results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of reviews are issued and published in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), 777(i) of the Act and 19 CFR 351.213(h), 351.214 and 351.221(b)(4).

Dated: April 8, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum:

A. Summary
B. Background
C. Surrogate Country
D. Separate Rates
E. Discussion of the Issues
  1. Use of Financial Information to Value Factory Overhead, Selling, General & Administrative (SG&A) Expenses, and Profit
  2. Selection of Surrogate Value for Water
  3. Application of a Zero Margin to Unexamined Respondent
  4. Clerical Error
F. Recommendation

[FR Doc. 2016–08501 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Investment Advisory Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an opportunity to apply for membership on the United States Investment Advisory Council.

SUMMARY: The Secretary of Commerce has established the first-ever federal advisory committee to solicit input on strategies to attract and retain foreign direct investment to the United States, the United States Investment Advisory Council (IAC). The establishment of this federal advisory committee is necessary to provide input to the Secretary of Commerce on the development and implementation of strategies and programs to attract and retain foreign investment in the United States and to support the position of the United States as the world's preeminent destination for foreign direct investment. The Department of Commerce is seeking applications for membership on the IAC.

DATES: All applications for immediate consideration for appointment must be received by the Office of Advisory Committees and Industry Outreach by 5:00 p.m. Eastern Daylight Time (EDT) on May 10, 2016. After that date, ITA will continue to accept applications under the notice for a period of up to two years from the deadline to fill any vacancies that may arise.

ADDRESSES: Please submit applications by email to *IAC@trade.gov,* attention: Li Zhou, Office of Advisory Committees and Industry Outreach, United States Investment Advisory Council Executive Secretariat, or by mail to Li Zhou, Office of Advisory Committees and Industry Outreach, United States Investment Advisory Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Office of Advisory Committees and Industry Outreach, United States Investment Advisory Council Executive Secretariat, Room 4043, 1401 Constitution Avenue NW., Washington DC 20230, *telephone* 202–482–4501, *email: IAC@trade.gov.*

SUPPLEMENTARY INFORMATION: The United States Investment Advisory Council (IAC) is established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App., to advise the Secretary of Commerce (Secretary) on matters relating to the promotion and retention of foreign direct investment in the United States (FDI).

The Department of Commerce, International Trade Administration, Office of Advisory Committees and Industry Outreach, is accepting applications for membership on the IAC. The IAC functions solely as an advisory committee. The IAC shall advise the Secretary on U.S. government policies and programs that affect FDI; identify and recommend programs and policies to help the United States attract and retain FDI; and recommend ways to support the position of the United States as the world's preeminent destination for FDI. The IAC shall act as a liaison among the stakeholders represented by the membership and shall provide a forum for the stakeholders on current and emerging issues regarding FDI. The IAC shall report to the Secretary on its activities and recommendations regarding FDI. In creating its reports, the IAC should survey and evaluate the investment and investment-facilitating activities of stakeholders, should identify and examine specific problems facing potential foreign investors, and should examine the needs of stakeholders to inform the IAC's efforts. The IAC should recommend specific solutions to the problems and needs that it identifies.

The IAC shall consist of no more than twenty members appointed by the Secretary. Members shall represent companies and organizations investing, seeking to invest, seeking foreign investors, or facilitating investment across many sectors, including but not limited to:

U.S.-incorporated companies that are majority-owned by foreign companies or by a foreign individual or individuals, or that generate significant foreign direct investment (*e.g.*, through their supply chains);

U.S. companies or entities whose business includes FDI-related activities or the facilitation of FDI; and

Economic development organizations and other U.S. governmental and non-governmental organizations and associations whose missions or activities include the promotion or facilitation of FDI.

Members shall be selected based on their ability to carry out the objectives of the IAC, in accordance with applicable Department of Commerce guidelines, in a manner that ensures that the IAC is balanced in terms of points of view, demographics, industry subsector, geography of the source and the destination of the FDI, and company size. Members shall represent a broad range of products and services and shall be drawn from large, medium, and small enterprises, private-sector organizations involved in investment, and other investment-related entities including non-governmental organizations, associations, and economic development organizations.

Priority may be given to executives (Chief Executive Officer, Executive Chairman, President, or comparable level of responsibility).

Members shall serve in a representative capacity, representing the views and interests of their sponsoring entity and those of their particular sector (if applicable). Members are not special government employees and will receive no compensation for their participation in IAC activities. Members will not be reimbursed for travel expenses related to IAC activities. Appointments to the IAC shall be made without regard to political affiliation. Because the IAC will advise the Secretary on U.S. international competitiveness in attracting and retaining FDI, each member must be a U.S. national.

Each member shall be appointed for a term of two years and will serve at the pleasure of the Secretary. The Secretary may at his/her discretion reappoint any member to an additional term or terms, provided that the member proves to work effectively on the IAC and that his/her knowledge and advice is still needed.

The Secretary shall designate a Chair and Vice Chair from among the members.

The IAC will meet a minimum of two times a year with, to the extent practical, additional meetings called at the discretion of the Secretary or his/her designee. Meetings will be held in Washington, DC or elsewhere in the United States, or by teleconference, as feasible. Members are expected to attend a majority of IAC meetings.

To be considered for membership, submit the following information by 5:00 p.m. EDT on May 10, 2016 to the email address listed in the **ADDRESSES** section:

1. Name and title of the individual requesting consideration.
2. A sponsor letter from the applicant on the sponsoring entity's letterhead containing a brief statement of why the applicant should be considered for membership on the IAC. This sponsor letter should also address the applicant's experience and leadership related to foreign direct investment.
3. The applicant's personal resume and short bio (less than 300 words).
4. An affirmative statement that the applicant meets all eligibility criteria, including an affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.
5. Information regarding the ownership and control of the sponsoring entity, including the stock holdings as appropriate.
6. The sponsoring entity's size, place of incorporation, product or service line, major markets in which the entity operates, and the entity's export or import experience.
7. A profile of the entity's foreign direct investment activities, including investment activities, investment plans, investment-facilitation activities, or other foreign direct investment activities.
8. Brief statement describing how the applicant will contribute to the work of the IAC based on his or her unique experience and perspective (not to exceed 100 words).
9. All relevant contact information, including mailing address, fax, email, phone number, and support staff information where relevant.

Dated: April 7, 2016.

Li Zhou,

Deputy Director, Office of Advisory Committees & Industry Outreach.

[FR Doc. 2016–08499 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–947]

Certain Steel Grating From the People's Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective April 13, 2016.

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain steel grating ("steel grating") from the People's Republic of China ("PRC") for the period of review ("POR") July 1, 2014, through June 30, 2015. This review covers two PRC companies.[1] The Department preliminarily finds that Ningbo Haitian has not demonstrated its eligibility for separate rate status and is, thus, part of the PRC-wide entity. The Department preliminarily finds that Yantai Xinke made no shipments of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results of review.

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[1] The companies under review are Ningbo Haitian International Co., Ltd. ("Ningbo Haitian") and Yantai Xinke Steel Structure Co., Ltd. ("Yantai Xinke").

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this administrative review on September 2, 2015.[2] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum,[3] which is dated concurrently with, and hereby adopted by, this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Results Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

The Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government because of Snowstorm "Jonas." Thus, all of the deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of review is now April 7, 2016.[4]

Scope of the Order

The products covered by this order are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process.[5] This merchandise is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item number 7308.90.7000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended ("the Act"). For a full discussion of the decisions taken in these preliminary results, *see* the Preliminary Decision Memorandum.

Separate Rates

Ningbo Haitian failed to submit a separate rate application or separate rate certification. Therefore, the Department preliminarily determines that Ningbo Haitian has not demonstrated its eligibility for a separate rate status and is part of the PRC-wide entity.[6] The PRC-wide entity rate is 145.18 percent.

Preliminary Determination of No Shipments

Yantai Xinke submitted a timely-filed certification that it had no exports, sales, or entries of subject merchandise during the POR.[7] Additionally, our inquiry to U.S. Customs and Border Protection ("CBP") did not identify any POR entries of Yantai Xinke's subject merchandise. Based on the foregoing, the Department preliminarily determines that Yantai Xinke did not have any reviewable transactions during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with our practice in NME cases, the Department is not rescinding this administrative review for Yantai Xinke, but intends to complete the review and issue appropriate instructions to CBP based on the final results of the review.[8]

Preliminary Results of Review

The Department preliminarily determines that Ningbo Haitian is not eligible for separate rates status. Moreover, the Department preliminarily determines that Yantai Xinke did not have reviewable transactions during the POR.

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically using ACCESS, within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii).[9] Rebuttal briefs, limited to issues raised in the case briefs, will be due five days after the due date for case briefs, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this review are requested to submit with each argument a statement of the issue, a summary of the argument not to exceed five pages, and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties, who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. Electronically filed case briefs/written comments and hearing requests must be received successfully in their entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[10] Hearing requests should contain: (1) The party's name, address and telephone number; (2) The number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those issues raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the time and date of the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington DC 20230.

Unless extended, the Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

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[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 53106 (September 2, 2015) ("Initiation Notice").

[3] *See* Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review of Certain Steel Grating from the People's Republic of China ("Preliminary Decision Memorandum"), from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance.

[4] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas," dated January 27, 2016.

[5] For the full scope of the order, *see* Preliminary Decision Memorandum at 2–3.

[6] *See Initiation Notice,* 80 FR 53106, 53107 ("All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification. . ."); Preliminary Decision Memorandum at 3.

[7] *See* Letter from Yantai Xinke to the Department, Re: "Certain Steel Grating from the People's Republic of China: A–570–947; No Shipment Certification," dated September 30, 2015.

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) ("*NME AD Assessment*") and the "Assessment Rates" section, below.

[9] *See also* 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.310(c).

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[11] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. The Department intends to instruct CBP to liquidate any entries of subject merchandise from Ningbo Haitian at 145.18 percent (the PRC-wide rate).

Additionally, pursuant to the Department's practice in NME cases, if we continue to determine that Yantai Xinke had no shipments of subject merchandise, any suspended entries of subject merchandise from Yantai Xinke will be liquidated at the PRC-wide rate.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters, which are not under review in this segment of the proceeding but which have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including Ningbo Haitian, the cash deposit rate will be the PRC-wide rate of 145.18 percent; and (3) for all non-PRC exporters of subject merchandise, which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: April 6, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Results Decision Memorandum

Summary
Background
Scope of the Order
Discussion of the Methodology
Non-Market Economy Country Status
PRC-wide Entity
Preliminary Determination of No Shipments
Recommendation

[FR Doc. 2016–08500 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Nondestructive Evaluation Techniques for Assessing Alkali-Silica Reaction Degradation of Concrete Consortium

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; request for information.

SUMMARY: The National Institute of Standards and Technology (NIST) is establishing the Non-destructive Evaluation Techniques for Assessing alkali-silica reaction (ASR) Degradation of Concrete Consortium ("Consortium") and invites organizations to participate in this Consortium. The Consortium will examine non-destructive evaluation (NDE) technologies that can be used to determine the presence and the evolution of ASR in concrete members. This notice is the initial step for the Consortium to provide participants' access to NIST concrete specimens constructed as large reinforced concrete blocks with ASR reactive aggregates ("NIST ASR Specimens"). Participants will use NIST ASR Specimens to determine whether NDE technologies are effective in identifying and quantifying degree of expansion and degradation of concrete members due to ASR. Participation in this Consortium is open to all eligible organizations, as described below.

DATES: NIST will accept responses for participation in this Consortium from prospective participants until May 13, 2016.

ADDRESSES: Information in response to this notice and requests for additional information about the Consortium can be directed via mail to Fahim Sadek, NIST Consortium Manager, Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8611, Gaithersburg, Maryland 20899, or via electronic mail to *fahim.sadek@nist.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about partnership opportunities or about terms and conditions of NIST's Cooperative Research and Development Agreement (CRADA), please contact Honeyeh Zube, CRADA and License Officer at the National Institute of Standards and Technology's Technology Partnerships Office, by written correspondence to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899, by electronic mail to *honeyeh.zube@nist.gov,* or by telephone at (301) 975–2209.

SUPPLEMENTARY INFORMATION: ASR is a concrete degradation mechanism in which the alkalis that are typically found in Portland cement react with certain amorphous or micro-crystalline siliceous phases in the aggregate and, in the presence of moisture, form an expansive gel. The gel generates macroscopic expansions within the concrete, which causes the concrete to crack and change its mechanical properties. NIST and the Nuclear Regulatory Commission (NRC) are engaged in ongoing research to develop a standardized method for quantifying the degree of degradation resulting from ASR. NIST's research includes the construction of four large reinforced concrete specimens with a length of 16 feet and a cross section of 3.5 feet by 6 feet. Three of the specimens will be cast with reactive aggregates resulting in low-, mid-, and high-ASR expansion, while the fourth specimen will be cast with non-reactive aggregates. The NIST ASR Specimens will be conditioned in a large curing chamber at the NIST, under controlled temperature and humidity, for a duration of three (3) years.

The purpose of this Consortium is for participants to evaluate technologies that can be used to quantify the magnitude and evolution of expansion and degradation in structural concrete members. The intent is for eligible participants to use the NIST ASR Specimens as a testbed, free of charge, for experimenting with various non-invasive, non-destructive techniques to detect and monitor the progress of the concrete degradation over time.

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[11] *See* 19 CFR 351.212(b)(1).

[12] For a full discussion of this practice, *see NME AD Assessment,* 76 FR 65694 (October 24, 2011).

To ensure safe laboratory procedures, each participant will need to conduct his/her operations in a manner consistent with NIST's safety policies and procedures. The participant will need to provide information regarding the technical qualifications of his/her personnel who would conduct laboratory work at NIST ("Participant Project Team"). Furthermore, the participant will need to provide a proposed safety standard operation procedure (SSOP) that would require approval from the NIST Consortium Manager. Each participant will be responsible for its Participant Project Team. Each member of the Participant Project Team working in the laboratory housing the NIST ASR Specimens will be required to take a one-time laboratory safety awareness training by NIST prior to accessing the laboratory. This training will require less than two (2) hours, and may take place before the first day of the Participant's Project Team's scheduled access to the NIST ASR specimens.

To minimize disruption to NIST's ongoing laboratory work, participants' access to the specimens will be limited. Because the kinetics of the expansion cannot be predicted accurately, NIST may not be able to provide the participants with advance notice regarding the availability of the NIST ASR Specimens to the participants for measurements. NIST will inform the participants only after the specimen undergoes a measureable change in expansion. Unless a periodic access schedule is already in place between NIST and a participant, the participant would need to be able to arrive, set-up, and conduct its measurements with as little as one (1) week of notice. In general, it is expected that the NIST ASR Specimens will be available to the participants for measurements about one (1) month after casting of the NIST ASR Specimens, and periodically for the three (3) months thereafter. NIST also intends to provide each participant with one (1) day per scheduled visit to set up the NDE equipment and to complete data collection. Participants must not employ NDE measurement processes that can alter the physical or chemical state of the existing concrete blocks.

Any data and intellectual property resulting from the research under this Consortium will be owned by the party that developed the data or intellectual property. NIST will not seek any patent protection on any invention conceived by NIST employees under this Consortium. Each participant in the Consortium will be required to inform NIST of any intellectual property developed by the members of its Participant Project Team in the performance of the research under this Consortium. Any intellectual property conceived by a member of its Participant Project Team will be subject to a non-exclusive, non-transferrable, paid-up license to practice to have practiced the intellectual property for government purposes, including research purposes. Each participant may use its own results for internal research, but a participant may not disclose the results to the public or any other third party without the prior written permission of NIST Consortium Manager.

Participation Process: Eligibility will be determined by NIST based on the information provided by prospective participants in response to this notice on a first-come, first-serve basis. All participants will be required to sign the Cooperative Research and Development Agreement (CRADA) for this Consortium, and each participant will be bound to the same terms and conditions in consideration of participation in the Consortium. Participants will not be required to contribute any funds or pay any fee. NIST will evaluate the written responses from prospective participants to determine eligibility to participate in this Consortium. Prospective participants should provide the following information to NIST's Consortium Manager:

(1) Can the NDE technology quantify, or does it have the potential to quantify, the mechanical properties of the concrete throughout the reinforced concrete block?

(2) Can the NDE technology quantify, or does it have the potential to quantify, the degree of expansion/crack development throughout the reinforced concrete block?

(3) Can the NDE technology quantify, or does it have the potential to quantify, the degree of the ASR reaction throughout the concrete block?

(4) Can the NDE technology quantify, or does it have the potential to quantify, the degree of expansion/stress on the surface of the reinforced concrete block?

A responding organization should not include any business proprietary information in its response to this request for information. NIST will not treat any information provided in response to this request as proprietary information.

Phillip Singerman,

Associate Director for Innovations and Industry Services.

[FR Doc. 2016–08418 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE562

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) *Atlantic Mackerel, Squid,* and *Butterfish* (*MSB*) Advisory Panel (AP) will meet to review recent fishery performance and develop Fishery Performance Reports for the *Atlantic Mackerel, Squid,* and *Butterfish* fisheries in preparation for the Council's review of existing 2015–2017 multi-year *MSB* specifications.

DATES: The meeting will be held Monday, May 2, 2016, from 9:30 a.m. to 12:30 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held via Webinar with a telephone-only connection option: *http://mafmc.adobeconnect.com/msbap2016fpr/*.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Agenda

The purpose of the meeting is to create Fishery Performance Reports by the Council's *Atlantic Mackerel, Squid,* and *Butterfish* (*MSB*) Advisory Panel (AP). The intent of these reports is to facilitate structured input from the Advisory Panel members for the *Atlantic Mackerel, Squid,* and *Butterfish* specifications process.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 8, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–08465 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE541

Fisheries of the South Atlantic; South Atlantic Fishery Management Council (Council)—Scientific and Statistical Committee Meeting; Social and Economic Sciences Panel Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: The Scientific and Statistical Committee (SSC) and the Socio-Economic Panel (SEP) of the South Atlantic Fishery Management Council (Council) will hold a meeting.

SUMMARY: The Council's Scientific and Statistical Committee and its Socio-Economic Panel will meet May 3, 2016 through May 5, 2016.

DATES: The Socio-Economic Panel meeting will be held on Tuesday, May 3, 2016, from 8:30 a.m. to 12 p.m. The Scientific and Statistical Committee meeting will begin at 1:30 p.m. on Tuesday, May 3, 2016, and end at 3 p.m. on Thursday, May 5, 2016, to view the agenda, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meetings and workshop will be held at the Town & Country Inn and Suites, 2008 Savannah Hwy, Charleston, SC 29407; phone 800/334–6660 or 843/571–1000; fax 843/766–9444.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone 843/571–4366 or toll free 866/SAFMC–10; FAX 843/769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Agenda

The items of discussion in the meeting agenda are as follows:

The SEP Meeting, Tuesday, May 3, 2016

1. Discussion of Optimum Yield.
2. Review decision tree for management.
3. Discuss proposed management measures for *Red Snapper.*
4. Discuss portfolio approach in social effects analyses.
5. Receive an update on recent and developing Council actions, including the Citizen Science Initiative, Visioning, and all active amendments.

The SSC Meeting, Tuesday, May 3, 2016, through Thursday, May 5, 2016.

1. Receive an update on 2015 Landings, Annual Catch Limits (ACLs), Acceptable Biological Catches (ABCs) and Accountability Measures (AMs), the Marine Resources Monitoring, Assessment, and Prediction (MARMAP) Fishery Independent Index, and recent Southeast Data, Assessment and Review (SEDAR) activities.
2. Receive an update on the Mid-Atlantic SSC meeting regarding *Blueline Tilefish.*
3. Review a new bag and size limit analysis methodology.
4. Review the South Atlantic For-Hire Reporting Amendment and discus the data collection variables.
5. Review Snapper Grouper Amendment 41 for *Mutton Snapper.*
6. Receive an update on the proposed SEDAR research track to be used in lieu of a Benchmark stock assessment.
7. Review the stock assessments for *Red Snapper, Gray Triggerfish,* and the assessment update for *Golden Tilefish.*
8. Discuss and apply the National Marine Fisheries Service Assessment Prioritization to South Atlantic stocks.
9. Discuss the findings of the *Spiny Lobster* Review Panel.
10. Receive an update on the Council's Citizen Science Initiative.
11. Review a proposed Decision Tool for *Hogfish* management.
12. Review Snapper Grouper Amendment 37 for *Hogfish.*
13. Discuss proposed management options for *Red Snapper.*
14. Discuss revisions to the ABC Control Rule.
15. Review the report of the Socio-Economic Panel.
16. Receive an update on the Council's work plan and current amendments.
17. Hold elections for the Chair and Vice-Chair.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Written comment on SSC agenda topics is to be distributed to the Committee through the Council office, similar to all other briefing materials. Written comment to be considered by the SSC shall be provided to the Council office no later than one week prior to an SSC meeting. For this meeting, the deadline for submission of written comment is 12 p.m. Tuesday, April 26, 2016. Two opportunities for comment on agenda items will be provided during SSC meetings and noted on the agenda. The first will be at the beginning of the meeting, and the second near the conclusion, when the SSC reviews its recommendations.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least ten working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 8, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–08480 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Ocean Exploration Advisory Board

AGENCY: Office of Ocean Exploration and Research (OER), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Ocean Exploration Advisory Board (OEAB). OEAB members will discuss and provide advice on Federal ocean exploration programs, with a particular emphasis on National Oceanic and AtmosphericAdministration (NOAA) Office of Ocean Exploration and Research (OER) activities; federal ocean exploration partners, including the National Science Foundation and the National Atmospheric and Space

Administration; advising NOAA on out-year budget development with respect to ocean exploration; and other matters as described in the agenda found on the OEAB Web site at *http://oeab.noaa.gov.*

Time and Dates: The announced meeting is scheduled for Tuesday, April 26, 2016 from 8:30 a.m.–5:45 p.m. EDT, and Wednesday, April 27, 2016 from 8:30 a.m.–4:00 p.m. EDT.

ADDRESSES: The meeting will be held at Venable LLC, 575 7th Street NW., Washington, DC.

Status: The meeting will be open to the public with a 30-minute public comment period on Tuesday, April 26th from 2:15 p.m. to 2:45 p.m. EDT (please check the agenda on the Web site to confirm the time). The public may listen to the meeting and provide comments during the public comment period via teleconference. Dial-in information may be found on the meeting agenda posted to the OEAB Web site.

The OEAB expects that public statements at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to three minutes. The Designated Federal Officer must receive written comments by April 19, 2016 to provide sufficient time for OEAB review. Written comments received after April 19, 2016 will be distributed to the OEAB but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Special Accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to David McKinnie, Designated Federal Officer (see below) by April 19, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. David McKinnie, Designated Federal Officer, Ocean Exploration Advisory Board, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., Seattle, WA 98115, (206) 526–6950.

SUPPLEMENTARY INFORMATION: NOAA established the OEAB under the Federal Advisory Committee Act (FACA) and legislation that gives the agency statutory authority to operate an ocean exploration program and to coordinate a national program of ocean exploration. The OEAB advises NOAA leadership on strategic planning, exploration priorities, competitive ocean exploration grant programs and other matters as the NOAA Administrator requests.

OEAB members represent government agencies, the private sector, academic institutions, and not-for-profit institutions involved in all facets of ocean exploration—from advanced technology to citizen exploration.

In addition to advising NOAA leadership, NOAA expects the OEAB to help to define and develop a national program of ocean exploration—a network of stakeholders and partnerships advancing national priorities for ocean exploration.

Dated: April 7, 2016.

Jason Donaldson,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–08430 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE540

Fisheries of the Gulf of Mexico; Southeast Data, Assessment and Review (SEDAR); Gulf of Mexico Data-limited Species (Red Drum, Lane Snapper, Wenchman, Yellowmouth Grouper, Speckled Hind, Snowy Grouper, Almaco Jack, Lesser Amberjack)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 49 Data Workshop for Gulf of Mexico Data-limited Species.

SUMMARY: The SEDAR 49 assessment of the Gulf of Mexico Data-limited Species will consist of: A Data Workshop; A series of Assessment Webinars; and a Review Workshop.

DATES: The SEDAR 49 Data Workshop will begin at 1 p.m. on Monday, May 2, 2016, and end at 12 p.m. on Friday, May 6, 2016; the Assessment Webinars and Review Workshop dates and times will publish in a subsequent issue in the **Federal Register**, to view the agenda, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The SEDAR 49 Data Workshop will be held at the Doubletree by Hilton New Orleans, 300 Canal Street, New Orleans, LA, 70130; 800–222–TREE.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator; phone 843/571–4366 or toll free 866/SAFMC–10; FAX 843/769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION:

Agenda

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Workshop agenda are as follows:

1. An assessment data set and associated documentation will be developed.
2. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance, as specified in the Terms of Reference for the workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) at least ten working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 8, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–08479 Filed 4–12–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Public Availability of Fiscal Year 2015 Service Contract Inventory

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("CFTC") is publishing notice to advise the public of the availability of CFTC's Fiscal Year ("FY") 2015 Service Contract Inventory.

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Sonda R. Owens in the Financial Management Branch, Procurement Section, at 202–418–5182 or *sowens@cftc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, Pub. L. 111–117, 123 Stat. 3034, CFTC is publishing this notice to advise the public of the availability of the FY 2015 Service Contract Inventory. CFTC has posted its inventory and a summary of the inventory on the CFTC homepage at the following link: *http://www.cftc.gov/About/CFTCReports/index.htm.*

This inventory provides information on service contract actions over $25,000 that were awarded in FY 2015. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy ("OFPP") and any subsequent guidance issued on the subject matter. OFPP's November 5, 2010 guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

Dated: April 7, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–08431 Filed 4–12–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS–2016–0013]

Negotiation of a Reciprocal Defense Procurement Memorandum of Understanding With the Ministry of Defense of Latvia

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: On behalf of the U.S. Government, DoD is contemplating negotiating and concluding a Reciprocal Defense Procurement (RDP) Memorandum of Understanding (MOU) with the Ministry of Defense of Latvia. DoD is requesting industry feedback regarding its experience in public defense procurements conducted by or on behalf of the Latvian Ministry of Defense or Armed Forces.

DATES: Comments must be received by May 13, 2016.

ADDRESSES: Submit comments to Defense Procurement and Acquisition Policy, Attn: Lt Col Judy Anderson, 3060 Defense Pentagon, Room 5E621, Washington, DC 20301–3060; or by email to *judy.p.anderson1.mil@mail.mil.*

FOR FURTHER INFORMATION CONTACT: Lt Col Judy Anderson, Senior Analyst, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OUSD (AT&L)), Defense Procurement and Acquisition Policy, Contract Policy and International Contracting; Room 5E621, 3060 Defense Pentagon, Washington, DC 20301–3060; telephone 703–695–7197.

SUPPLEMENTARY INFORMATION: DoD has concluded RDP MOUs with 23 qualifying countries, as defined in the Defense Federal Acquisition Regulation Supplement (DFARS) 225.003, at the level of the Secretary of Defense and his counterpart. The purpose of an RDP MOU is to promote rationalization, standardization, and interoperability of conventional defense equipment with allies and other friendly governments. These MOUs provide a framework for ongoing communication regarding market access and procurement matters that enhance effective defense cooperation.

RDP MOUs generally include language by which the Parties agree that their defense procurements will be conducted in accordance with certain implementing procedures. These procedures relate to—

- Publication of notices of proposed purchases;
- The content and availability of solicitations for proposed purchases;
- Notification to each unsuccessful offeror;
- Feedback, upon request, to unsuccessful offerors concerning the reasons they were not allowed to participate in a procurement or were not awarded a contract; and
- Provision for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the extent possible, complaints are equitably and expeditiously resolved.

Based on the MOU, each country affords the other country certain benefits on a reciprocal basis consistent with national laws and regulations. The benefits that the United States accords to the products of qualifying countries include—

- Offers of qualifying country end products are evaluated without applying the price differentials otherwise required by the Buy American statute and the Balance of Payments Program;
- The chemical warfare protection clothing restrictions in 10 U.S.C. 2533a and the specialty metals restriction in 10 U.S.C. 2533b(a)(1) do not apply to products manufactured in a qualifying country; and
- Customs, taxes, and duties are waived for qualifying country end products and components of defense procurements.

If DoD (for the U.S. Government) concludes an RDP MOU with the Ministry of Defense of Latvia, then Latvia would be listed as one of the qualifying countries in the definition of qualifying country at DFARS 225.003, and offers of products of Latvia or that contain components from Latvia would be afforded the benefits available to all qualifying countries. This also means that U.S. products would be exempt from any analogous "Buy Latvia" and "Buy European Union" laws or policies applicable to procurements by the Latvian Ministry of Defense or Armed Forces.

While DoD is evaluating Latvia's laws and regulations in this area, DoD would benefit from U.S. industry's experience in participating in Latvia's public defense procurements. DoD is, therefore, asking U.S. firms that have participated or attempted to participate in procurements by or on behalf of Latvia's Ministry of Defense or Armed Forces to let us know if the procurements were conducted with transparency, integrity, fairness, and due process in accordance with published procedures, and if not, the nature of the problems encountered.

DoD is also interested in comments relating to the degree of reciprocity that exists between the United States and Latvia when it comes to the openness of defense procurements to offers of products from the other country.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–08485 Filed 4–12–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the United States Government as represented by the Secretary of the Navy and made available for licensing by the Department of the Navy: U.S. Patent Application No. 13/584934—"Multiple radios per node network architecture."

ADDRESSES: Request for copies of the U.S. Patent Application cited should be directed to Space and Naval Warfare Systems Center Pacific, Office of Research and Technology Applications, Code 72120, 53560 Hull St., Bldg A33, Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Martin Machniak, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33, Room 2308, San Diego, CA 92152–5001, telephone 619–553–6416, Email: *martin.machniak@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: April 7, 2016.

C. Pan,

Alternate Federal Register Liaison Officer, Lieutenant, Judge Advocate General's Corps, U.S. Navy.

[FR Doc. 2016–08470 Filed 4–12–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; BladeBeam, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to BladeBeam, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent Application No. 13/584934—"Multiple radios per node network architecture."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, no later than April 28, 2016.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33, Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Martin Machniak, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33, Room 2308, San Diego, CA 92152–5001, telephone 619–553–6416, E-Mail: *martin.machniak@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: April 7, 2016.

C. Pan,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2016–08471 Filed 4–12–16; 8:45 am]

BILLING CODE 3810–FF–P

ELECTION ASSISTANCE COMMISSION

Notice of Public Meeting for EAC Standards Board (Correction)

AGENCY: U.S. Election Assistance Commission.

DATE AND TIME: Thursday, April 14, 2016, 9:00 a.m.–5:00 p.m. and Friday, April 15, 2016, 8:10 a.m.–12:00 p.m. (Executive Board Session: Thursday, April 14, 2016, 7:30 p.m.).

PLACE: The Sheraton Carlsbad Hotel, 5480 Grand Pacific Drive, Carlsbad, CA 92008, Phone: (760) 827–2400.

SUMMARY: EAC is correcting the original notice that published on March 30, 2016 to reference that the meeting is being held in accordance with the Federal Advisory Committee Act (FACA), and to provide instructions on the submission of relevant public statements regarding the meeting.

Purpose: In accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. Appendix 2), the U.S. Election Assistance Commission (EAC) Standards Board will meet to address its responsibilities under the Help America Vote Act of 2002 (HAVA), to present its views on issues in the administration of Federal elections, formulate recommendations to the EAC, and receive updates on EAC activities.

Agenda: The Standards Board will receive an overview of EAC Agency Operations, and will receive updates on EAC Grants and Audits, EAC Testing and Certification, and EAC's New Web site Rollout. The Board will receive an update on the Status of State Testing and Certification Consortium. The Board will receive an update on the work of EAC's Technical Guidelines Development Committee (TGDC). The Board will discuss and vote on recommendations from the TGDC. The Board will receive briefings from the National Association of Secretaries of State (NASS), the Federal Voting Assistance Program (FVAP), and the United States Postal Service (USPS).

The Standards Board will conduct committee breakout sessions and hear committee reports. The Board will discuss and vote on proposed Bylaws amendments, and will fill vacancies on the Executive Board of the Standards Board. The Executive Board will elect new officers, appoint Standards Board committee members and chairs, and consider other administrative matters.

SUPPLEMENTARY INFORMATION: Members of the public may submit relevant written statements to the Standards Board with respect to the meeting no later than 5:00 p.m. EDT on Tuesday, April 12, 2016. Statements may be sent via email at *facaboards@eac.gov,* via standard mail addressed to the U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910, or by fax at 301–734–3108.

This meeting will be open to the public.

Person To Contact for Information: Bryan Whitener, Telephone: (301) 563–3961.

Bryan Whitener,

Director of Communications and Clearinghouse, U.S. Election Assistance Commission.

[FR Doc. 2016–08402 Filed 4–12–16; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Cheniere Marketing, LLC & Corpus Christi Liquefaction, LLC, Cheniere Marketing, LLC, Corpus Christi Liquefaction, LLC, Sabine Pass Liquefaction, LLC, Statement Regarding Change in Control

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of a statement regarding change in control, filed January 15, 2016 (Statement), by Cheniere Marketing, LLC (CMI), Corpus Christi Liquefaction, LLC (CCL), and Sabine Pass Liquefaction, LLC (SPL) in the above-referenced dockets. The Statement updates equity ownership information regarding Cheniere Energy, Inc. (Cheniere), a publicly-traded company.

Sabine Pass Liquefaction, LLC	[FE Docket No. 10–111–LNG]
Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC	[FE Docket No. 12–97–LNG]
Sabine Pass Liquefaction, LLC	[FE Docket No. 13–30–LNG]
Sabine Pass Liquefaction, LLC	[FE Docket No. 13–42–LNG]
Sabine Pass Liquefaction, LLC	[FE Docket No. 13–121–LNG]
Cheniere Marketing, LLC,	[FE Docket No. 14–31–LNG]
Sabine Pass Liquefaction, LLC	[FE Docket No. 14–92–LNG]
Sabine Pass Liquefaction, LLC	[FE Docket No. 15–63–LNG]
Sabine Pass Liquefaction, LLC	[FE Docket No. 15–171–LNG]

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, April 28, 2016.

ADDRESSES:

Electronic Filing by email: *fergas@hq.doe.gov*

Regular Mail

U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Benjamin Nussdorf, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7893.

Edward Myers, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION: CMI is a limited liability company organized under the laws of Delaware, and a wholly-owned direct subsidiary of Cheniere. CCL is a limited liability company organized under the laws of Delaware, and a wholly-owned indirect subsidiary of Cheniere. SPL is a limited liability company organized under the laws of Delaware, and a wholly-owned indirect subsidiary of Cheniere Energy Partners, L.P. (CQP), a publicly-traded limited partnership that is, in turn, an indirect subsidiary of Cheniere.

The Statement refers to numerous proceedings before DOE/FE involving exports and imports of LNG and natural gas to and from countries with which the United States has entered into a free trade agreement requiring national treatment for trade in natural gas (FTA countries) and other countries (non-FTA countries). Consistent with the revised procedures established by DOE/FE for reviewing changes in control (CIC Revised Procedures),[1] this Notice addresses only those Cheniere dockets in which final authorizations have been issued to export liquefied natural gas (LNG) to non-FTA countries.[2] The Table in this section identifies the proceedings addressed by this Notice:

FE Docket number	DOE/FE Order number	Authorization holder
10–111–LNG	2961–A	Sabine Pass Liquefaction, LLC.
12–97–LNG	3638	Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC.
13–30–LNG	3669	Sabine Pass Liquefaction, LLC.
13–42–LNG	3669	Sabine Pass Liquefaction, LLC.
13–121–LNG	3669	Sabine Pass Liquefaction, LLC.
14–31–LNG	3442	Cheniere Marketing, LLC.
15–63–LNG	3792	Sabine Pass Liquefaction, LLC.

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[1] 79 FR 65541 (Nov. 5, 2014).

[2] The Statement also identifies multiple other proceedings among the Cheniere companies affected by the change in control, including proceedings filed under Section 3(c) of the Natural Gas Act, 15 U.S.C. 717b(c) for exports to free trade agreement (FTA) countries, and proceedings seeking authority for LNG imports. Consistent with the Revised CIC Procedures, DOE gives immediate effect to these changes. *See* 79 FR at 65542. These proceedings include: FE Docket No. 10–85–LNG (DOE/FE Order 2833), FE Docket No. 12–99–LNG (DOE/FE Order No. 3164), FE Docket No. 14–31–LNG (DOE/FE Order No. 3442), and FE Docket No. 14–186–NG (DOE/FE Order No. 3578). Among the proceedings identified in the Statement, CCL currently has one application pending before DOE/FE in FE Docket No. 15–97–LNG, in which it is requesting authorization to export LNG to non-FTA countries. Consistent with DOE's Revised CIC Procedures, DOE gives immediate effect to the amendment of the pending application in that docket represented by the change in control described in the Statement. Furthermore, DOE will only accept comments in response to the Statement in FE Docket No. 15–97–LNG from parties to that proceeding. *See* 79 FR at 65542.

FE Docket number	DOE/FE Order number	Authorization holder
15–171–LNG	3767	Sabine Pass Liquefaction, LLC.

The Statement asserts the following Carl Icahn-affiliated investment vehicles, together with Mr. Icahn individually, beneficially own, in the aggregate, approximately 13.8% of Cheniere's issued and outstanding common stock: High River Limited Partnership, Hopper Investments, LLC, Barberry Corp., Icahn Partners Master Fund LP, Icahn Offshore LP, Icahn Onshore LP, Icahn Capital LP, IPH GP LLC, Icahn Enterprises Holdings L.P., Icahn Enterprises G.P. Inc., and Beckton Corp. (the "Icahn Companies"). The Icahn Companies' acquisition of Cheniere common stock resulted from multiple open-market transactions. Cheniere has also appointed to its Board of Directors ("Board"), of which there are now eleven members, two individuals who are managing directors of Icahn Capital L.P.

Further, the Statement asserts the following Seth Klarman-affiliated investment vehicles, together with Mr. Klarman individually, beneficially own, in the aggregate, approximately 15.01% of Cheniere's issued and outstanding common stock: The Baupost Group, L.L.C. and SAK Corporation (the "Klarman Companies"). The Klarman Companies' acquisition of Cheniere common stock resulted from multiple open-market transactions on behalf of various private investment limited partnerships for which The Baupost Group, L.L.C. acts as an investment adviser and general partner.

The Statement recognizes that the ownership interests acquired by the Icahn Companies' and the Klarman Companies' in Cheniere's common stock may trigger the 10% rebuttable presumption of a change in control for CCL and CMI. However, the Statement asserts that the presumption is rebutted as to CCL and CMI because (1) there has been no change in ownership of CCL or CMI, and one or both of them will remain the holder(s) of their respective authorizations and, in the case of CCL, the applicant in Docket No. 15–97–LNG; (2) there has been no change in operation or manner in which CCL and CMI are managed; and (3) the transactions described in the Statement did not grant the Icahn Companies or the Klarman Companies the power to direct the management or policies of CCL or CMI, or provide a veto right over other shareholders.

With respect to SPL, the Statement asserts that the Icahn Companies' and the Klarman Companies' transactions do not trigger the 10% rebuttable presumption because the indirect ownership stakes of the Icahn Companies and the Klarman Companies in SPL do not equate to 10% or more of the outstanding voting securities for SPL. Additionally, the Statement asserts that even were DOE to determine that the 10% threshold had been reached, the presumption is rebutted because (1) there has been no change in ownership of SPL and it will remain the holder of its current authorizations and the applicant in Docket No. 15–63–LNG; (2) there has been no change in the operation or manner in which SPL is managed or the terms of its associated export operations; and (3) neither the Icahn Companies or the Klarman Companies have acquired the power to direct the management or policies of SPL or a veto right over other shareholders.

Additional details can be found in the Statement, posted on the DOE/FE Web site at: *http://www.fossil.energy.gov/programs/gasregulation/authorizations/2012_applications/CCL-CMI_and_SPL_Equity_Ownership_Change0.pdf.*

DOE/FE will review the Statement in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures). Pursuant to the Revised CIC Procedures, DOE/FE will (1) give immediate effect to the amendment of pending applications for non-FTA export authorizations and modifications of previously issued non-FTA export authorizations, but will accept and consider answers to these amendments and modifications in response to this Notice before taking further action; and (2) give immediate effect to the modification of pending applications for FTA export authorizations, pending applications for natural gas import authorizations, previously issued FTA export authorizations, and previously issued natural gas import authorizations, but no further action will be taken as to these proceedings.

Protests, motions to intervene, notices of intervention, and written comments are invited in response to this Notice only as to the amendment of previously issued non-FTA export authorizations, as described. *See also,* n.2, *supra.*

DOE/FE Evaluation

DOE will give effect to the change in control in accordance with its CIC procedures. Interested persons will be provided 15 days from the date of publication of this Notice in the **Federal Register** in order to move to intervene, protest, and answer the statement of change in control. If no interested person protests the change in control and DOE takes no action on its own motion, the amendment will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

In response to this Notice, interested persons will be provided 15 days from the date of publication of this Notice in order to move to intervene, protest, and answer the statement of change in control. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: emailing the filing to *fergas@hq.doe.gov,* with the individual FE Docket Number(s) in the title line, or Cheniere Change in Control in the title line to include all applicable dockets in this Notice; (2) mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in ADDRESSES; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in ADDRESSES. All filings must include a reference to the individual FE Docket Number(s) in the title line, or Cheniere Change in Control in the title line to include all applicable dockets in this Notice. **Please Note:** If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final order may be issued based on the official record in accordance with 10 CFR 590.316.

The Notice is available for inspection and copying in the Office of Regulation and International Engagement docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC, 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The Notice and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on April 8, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

[FR Doc. 2016–08493 Filed 4–12–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–755–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Apr 2016 to be effective 4/1/2016.
Filed Date: 3/30/16.
Accession Number: 20160330–5000.
Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–756–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Service Agreement Exhibit B to be effective 5/1/2016.
Filed Date: 3/30/16.
Accession Number: 20160330–5245.
Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–757–000.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 5/1/2016.
Filed Date: 3/30/16.
Accession Number: 20160330–5246.
Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–758–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Penalty Revenue Crediting Report of Natural Gas Pipeline Company of America LLC.
Filed Date: 3/30/16.
Accession Number: 20160330–5270.
Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–759–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Request for Waiver and Extensions of El Paso Natural Gas Company, L.L.C.
Filed Date: 3/30/16.
Accession Number: 20160330–5277.
Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–760–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement—BP effective 4/1/2016 to be effective 4/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5009.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–761–000.
Applicants: Texas Eastern Transmission, LP
Description: § 4(d) Rate Filing: Negotiated Rates—Apr2016 Chevron TEAM 2014 Releases to be effective 4/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5010.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–762–000.
Applicants: Northern Border Pipeline Company.
Description: § 4(d) Rate Filing: Compressor Usage Surcharge 2016 to be effective 5/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5012.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–763–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: DTCA 2016 to be effective 5/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5057.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–764–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) Rate Filing: Wacker Release to Twin Eagle to be effective 4/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5061.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–765–000.
Applicants: Pine Needle LNG Company, LLC.
Description: § 4(d) Rate Filing: 2016 Annual Fuel and Electric Power Tracker Filing to be effective 5/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5067.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–766–000.
Applicants: TC Offshore LLC.
Description: Transporter's Use Report of TC Offshore LLC.
Filed Date: 3/31/16.
Accession Number: 20160331–5080.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–767–000.
Applicants: Bison Pipeline LLC.
Description: Company Use Gas Annual Report of Bison Pipeline LLC.
Filed Date: 3/31/16.
Accession Number: 20160331–5081.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–768–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Compliance filing Flow Through of Cash Out Revenues filed on 3–31–16 to be effective 5/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5085.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–769–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Compliance filing Flow Through of Penalty Revenues Report filed on 3–31–16.
Filed Date: 3/31/16.
Accession Number: 20160331–5088.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–770–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: OTRA—Summer 2016 to be effective 5/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5095.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–771–000.
Applicants: Hardy Storage Company, LLC.
Description: § 4(d) Rate Filing: RAM 2016 to be effective 5/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5104.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–772–000.
Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Colonial Gas Releases to BBPC to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5117.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–773–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—ConEd Release to Emera to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5123.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–774–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Removal of Expired Contracts to be effective 5/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5125.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–775–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Apr2016 EQT TEAM 2014 Releases to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5138.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–776–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20160331 Negotiated Rates to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5190.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–777–000.

Applicants: KPC Pipeline, LLC.

Description: § 4(d) Rate Filing: Fuel Reimbursement Adjustment to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5193.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–778–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: § 4(d) Rate Filing: Negotiated Rates—ESS—WGL Midstream, Inc. to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5216.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–779–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 03/31/16 Negotiated Rates—Emera Energy Services Inc. (RTS) 2715–29 to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5225.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–780–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 03/31/16 Negotiated Rates—Emera Energy Services Inc. (RTS) 2715–30 to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5226.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–781–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement—Range Resources effective 04–01–2016 to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5231.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–782–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—NJR Energy Services Contract 911348 to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5233.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–783–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 03/31/16 Negotiated Rates—Exelon Generation Company, LLC (RTS) 1985–26 to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5237.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–784–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 03/31/16 Negotiated Rates—Exelon Generation Company, LLC (RTS) 1985–27 to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5243.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–785–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Annual Incidental Purchases and Sales Report of Trailblazer Pipeline Company LLC.

Filed Date: 3/31/16.

Accession Number: 20160331–5248.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–786–000.

Applicants: Questar Overthrust Pipeline Company.

Description: § 4(d) Rate Filing: Cleanup of provisions affected by Order No. 587–W to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5286.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–787–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Sabine Pass Negotiated Rate to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5297.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–788–000.

Applicants: ETC Tiger Pipeline, LLC.

Description: § 4(d) Rate Filing: Non-Conforming Agreement Restated–Chesapeake to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5309.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–789–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing–April–Red River 1010443–CERC 1001019 to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5323.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–790–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Expired Negotiated and/or Non-Conforming Rate Agreements to be effective 5/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5347.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–791–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: § 4(d) Rate Filing: Exhibit B Update—add and delete contracts to be effective 4/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5354.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–792–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Non-Conforming and Negotiated to Negotiated Rate Agreement Update to be effective 5/1/2016.

Filed Date: 3/31/16.

Accession Number: 20160331–5358.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–793–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Amendment—ODEC 2016 to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5001.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–794–000.

Applicants: Gas Transmission Northwest LLC.

Description: § 4(d) Rate Filing: Powerex Neg Rate Agmt to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5020.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–795–000.

Applicants: Northern Border Pipeline Company.

Description: § 4(d) Rate Filing: BP Canada Energy Neg Rate Agmts 2016 to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5021.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–796–000.

Applicants: ANR Storage Company.

Description: § 4(d) Rate Filing: Removal/Addition of 4 Neg Rate Agmts to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5022.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–797–000.

Applicants: ANR Pipeline Company.

Description: § 4(d) Rate Filing: Wisconsin Gas LLC Neg Rate Agmt to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5023.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–798–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits 2014–2015 Cashout Report.

Filed Date: 3/31/16.

Accession Number: 20160331–5401.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–799–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: NC Agmt Filing (Clarksdale 20393) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5103.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–800–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Cross Timbers 29061 to 35435) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5106.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–801–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Newfield 18 to Tenaska 1757) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5133.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–802–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (BP 37–22) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5136.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–803–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (EOG 34687 to Trans LA 46117) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5146.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–804–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various eff 4–1–16) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5148.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–805–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (PH 41455 to BP 46122, Texla 46179, Sequent 46192) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5149.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–806–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Willmut 35221 to BP 46172) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5150.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–807–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Encana 37663 to BP 46181, Texla 46182) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5151.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–808–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (EOG 34687 to Sempra 46193) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5152.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–809–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (Chevron 41610–10) to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5153.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–810–000.

Applicants: Kern River Gas Transmission Company.

Description: Annual Gas Compressor Fuel Report of Kern River Gas Transmission Company.

Filed Date: 3/31/16.

Accession Number: 20160331–5417.

Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–811–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2016 October Period Two Rates to be effective 10/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5174.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–812–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 04/01/16 Negotiated Rates—Emera Energy Services Inc. (RTS) 2715–13 & 2715–26 to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5181.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–813–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 04/01/16 Negotiated Rates—Consolidated Edison Energy Inc. (HUB) 2275–89 to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5196.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–814–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: Fuel Tracker—2016 to be effective 5/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5217.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–815–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Additional Amendments and Superseding Agreements re Rate Case Settlement to be effective 4/1/2016.

Filed Date: 4/1/16.

Accession Number: 20160401–5250.

Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–816–000.

Applicants: Sabine Pipe Line LLC.

Description: § 4(d) Rate Filing: Sabine Negotiated Rate 4–1–16 to be effective 4/1/2016.

Filed Date: 4/1/16.
Accession Number: 20160401–5287.
Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–817–000.
Applicants: Rockies Express Pipeline LLC.
Description: Annual Incidental Purchases and Sales Report of Rockies Express Pipeline LLC.
Filed Date: 4/1/16.
Accession Number: 20160401–5311.
Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–818–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—4/1/2016 to be effective 4/1/2016.
Filed Date: 4/1/16.
Accession Number: 20160401–5336.
Comments Due: 5 p.m. ET 4/13/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–731–001.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Tariff Amendment: 03/31/16 Negotiated Rates—Mercuria Energy Gas Trdng LLC (RTS) 7540–06 (AMD) to be effective 4/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5151.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP16–732–001.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Tariff Amendment: 03/31/16 Negotiated Rates—Mercuria Energy Gas Trdng LLC (RTS) 7540–07 (AMD) to be effective 4/1/2016.
Filed Date: 3/31/16.
Accession Number: 20160331–5163.
Comments Due: 5 p.m. ET 4/12/16.

Docket Numbers: RP13–751–003.
Applicants: Algonquin Gas Transmission, LLC.
Description: Compliance filing AGT RP13–751 Compliance Filing to be effective 4/1/2016.
Filed Date: 4/1/16.
Accession Number: 20160401–5348.
Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–296–001.
Applicants: Midwestern Gas Transmission Company.
Description: Compliance filing Non-Conforming and Negotiated Rate Agreement Effective Date—Antero Resources to be effective 3/29/2016.
Filed Date: 4/1/16.
Accession Number: 20160401–5108.
Comments Due: 5 p.m. ET 4/13/16.

Docket Numbers: RP16–602–001.
Applicants: East Cheyenne Gas Storage, LLC.
Description: Compliance filing ECGS Order No. 587–W Compliance 4–1–16 to be effective 4/1/2016.
Filed Date: 4/1/16.
Accession Number: 20160401–5219.
Comments Due: 5 p.m. ET 4/13/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08410 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–279]

Public Utility District No. 2 of Grant County; Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2114–279.

c. *Date Filed:* March 10, 2016 and March 29, 2016.

d. *Applicant:* Public Utility District No. 2 of Grant County (Grant PUD).

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* The Priest Rapids Hydroelectric Project is located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan counties, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Ross Hendrick, License Compliance Manager, Grant PUD, P.O. Box 878, Ephrata, WA 98823–0878, (509) 793–1468, *rhendr1@gcpud.org.*

i. *FERC Contact:* Hillary Berlin, (202) 502–8915, *hillary.berlin@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 5, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2114–279.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee filed a request for Commission approval to authorize a non-project use lease agreement between the Grant PUD and the Crescent Bar Condominium Master Association, the Crescent Bar Recreation Vehicle Homeowners Association, and the Crescent Bar South RV Park Owners Association. The lease would allow residential use of 38.5 acres of project lands on Crescent Bar Island within the Wanapum Reservoir.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08413 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP16–21–000	3–21–2016	Mass Mailing.[1]
2. CP16–21–000	3–21–2016	Gordan Massman.
3. CP16–21–000	3–23–2016	Mass Mailing.[2]
4. CP16–21–000	3–28–2016	Mass Mailing.[3]
5. CP16–21–000	3–28–2016	Alice and Greg Newth.
6. IS16–61–000	3–28–2016	R. Gordan Gooch.
7. CP16–21–000	3–29–2016	Deborah Lievens.
Exempt:		
1. CP16–21–000	3–21–2016	State of New Hampshire Senate President Charles W. Morse.
2. CP13–492–000	3–22–2016	Confederated Tribes of Coos, Lower Umqua and Siuslaw Indians.
3. CP13–83–000	3–22–2016	U.S. Senators.[4]
4. CP16–21–000	3–24–2016	U.S. House Representative Niki Tsongas.
5. CP15–554–000	3–24–2016	U.S. House Representative Chris Van Hollen.
6. CP13–193–000	3–24–2016	FERC Staff.[5]
7. CP14–96–000	3–25–2016	U.S. House Representative Nita M. Lowey.
8. CP16–21–000	3–25–2016	U.S. House Representative Chris Gibson.
9. CP16–21–000	3–28–2016	U.S. Senator Jeanne Shaheen.
10. CP15–554–000	3–28–2016	U.S. House Representative John P. Sarbanes.
11. CP16–21–000	3–31–2016	U.S. House Representative Chris Gibson.

[1] 9 letters have been sent to FERC Commissioners and staff under this docket number.

[2] 2 letters have been sent to FERC Commissioners and staff under this docket number.
[3] 6 letters have been sent to FERC Commissioners and staff under this docket number.
[4] Senators Charles E. Schumer and Kirsten Gillibrand.
[5] Telephone Communication Record from March 22, 2016 call with U.S. Congressman Pedro Pierluisi.

Dated: April 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08414 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2829–000]

City of Loveland, Co; Notice of Authorization for Continued Project Operation

The Loveland Hydroelectric Project is located in Larimer County, Colorado on the Big Thompson River.

The license for Project No. 2829 was issued for a period ending March 8, 2016. Section 15(a) (1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2829 is issued to the licensee for a period effective March 9, 2016 through March 8, 2017 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 8, 2017, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.[1]

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, City of Loveland, Colorado, is authorized to continue operation of the Loveland Hydroelectric Project, until such time as the Commission acts on its application to surrender its license.

Dated: April 7, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–08476 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1763–002; ER10–1765–002; ER10–1766–002; ER10–1769–002; ER10–1767–002; ER10–1532–002; ER10–1541–003; ER10–1642–004; ER10–1529–003; ER13–2349–001; ER13–2350–001.

Applicants: Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., Entergy Nuclear Palisades, LLC, Entergy Power, LLC, EWO Marketing, LLC, Northern Iowa Windpower, LLC, EAM Nelson Holding, LLC, RS Cogen, LLC.

Description: Notice of Change in Status of the Entergy Central MBR Utilities.

Filed Date: 4/1/16.

Accession Number: 20160401–5475.

Comments Due: 5 p.m. ET 4/22/16.

Docket Numbers: ER15–746–004.

Applicants: RC Cape May Holdings, LLC.

Description: Compliance filing: RC Cape May 90-day Informational Filing to be effective 3/1/2016.

Filed Date: 3/3/16.

Accession Number: 20160303–5110.

Comments Due: 5 p.m. ET 4/19/16.

Docket Numbers: ER16–1342–000.

Applicants: Arizona Public Service Company.

Description: Notice of Cancellation, Request for Approval of Accounting and Rate Treatment, and Request for Expedited Action and Shortened Comment Period of Arizona Public Service Company.

Filed Date: 4/1/16.

Accession Number: 20160401–5485.

Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: ER16–1344–000.

Applicants: Seward Generation, LLC.

Description: Baseline eTariff Filing: Notice of Sucession to be effective 4/4/2016.

Filed Date: 4/4/16.

Accession Number: 20160404–5260.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: ER16–1345–000.

Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: VEPCO submits 3 Wholesale Distribution Service Agreements Nos. 4433, 4434, 4435 to be effective 12/26/2015.

Filed Date: 4/5/16.

Accession Number: 20160405–5047.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: ER16–1346–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–04–05_SA 2911 LEPA–MISO e-NRIS (J373) to be effective 4/6/2016.

Filed Date: 4/5/16.

Accession Number: 20160405–5063.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: ER16–1347–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA SA No. 3636, Queue No. X1–085 per Assignment to be effective 8/12/2013.

Filed Date: 4/5/16.

Accession Number: 20160405–5098.

Comments Due: 5 p.m. ET 4/26/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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[1] On November 12, 2014, City of Loveland, Colorado filed an application to surrender its license due to severe damage to the powerhouse and other project features as a result of flooding in September of 2013. The surrender application is currently pending.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08409 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–82–000.
Applicants: La Frontera Holdings, LLC.
Description: La Frontera Holdings, LLC Submits Self-Certification of EWG Status.
Filed Date: 4/5/16.
Accession Number: 20160405–5173.
Comments Due: 5 p.m. ET 4/26/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–704–001.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Compliance Filing—Revisions to Identify U.S. Canada Border as POD/POR to be effective 3/8/2016.
Filed Date: 4/5/16.
Accession Number: 20160405–5121.
Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: ER16–1348–000.
Applicants: Midcontinent Independent System Operator, Inc., Great River Energy.
Description: § 205(d) Rate Filing: 2016–04–05—GRE Attachment O Revisions to be effective 6/4/2016.
Filed Date: 4/5/16.
Accession Number: 20160405–5114.
Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: ER16–1349–000.
Applicants: Kentucky Utilities Company.
Description: Initial rate filing: KU Rate Schedule 408 APCO Borderline Agmt to be effective 4/5/2016.
Filed Date: 4/5/16.
Accession Number: 20160405–5157.
Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: ER16–1350–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2252R4 Cottonwood Wind Project GIA Cancellation to be effective 3/10/2016.
Filed Date: 4/5/16.
Accession Number: 20160405–5159.
Comments Due: 5 p.m. ET 4/26/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08415 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–8–000]

Commission Information Collection Activities (FERC–539); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–539 (Gas Pipeline Certificates: Import & Export Related Applications).

DATES: Comments on the collection of information are due June 13, 2016.

ADDRESSES: You may submit comments (identified by Docket No. IC16–8–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–539, Gas Pipeline Certificates: Import & Export Related Applications.

OMB Control No.: 1902–0062.

Type of Request: Three-year extension of the FERC–539 information collection requirements with no changes to the current reporting requirements.

Abstract: Section 3 of the Natural Gas Act (NGA)[1] provides, in part, that ". . . no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order from the Commission authorizing it to do so." The 1992 amendments to section 3 of the NGA concern importation or exportation from/to a nation which has a free trade agreement with the United States and requires that such importation or exportation: (1) Shall be deemed to be a "first sale" (*i.e.* not a sale for a resale) and (2) shall be deemed to be consistent with the public interest. Applications for such importation or exportation should be granted without modification or delay.

The regulatory functions of section 3 are shared by the Commission and the Secretary of Energy, Department of Energy (DOE). The Commission has the authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. DOE approves the importation or exportation of the natural gas commodity.[2] Additionally, pursuant to the DOE Delegation Order and Executive Order Nos. 10485 and 12038, the Commission has the authority to issue Presidential Permits for natural gas facilities which cross an international border of the United States. Persons seeking Section 3 authorizations or Presidential Permits from the Commission file applications for such requests pursuant to part 153 of the Commission's Regulations.[3]

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[1] 15 U.S.C. 717–717w.

Type of Respondents: The respondents include all jurisdictional natural gas companies seeking authorization from the Commission to import or export natural gas.

Estimate of Annual Burden:[4] The Commission estimates the annual public reporting burden for the information collection as:

FERC–539—GAS PIPELINE CERTIFICATES: IMPORT & EXPORT RELATED APPLICATIONS

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response[5] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
12	2	24	12 hrs.; $864	288 hrs.; $20,736	$1,728

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 7, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016–08472 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of NorthWestern Corporation, Deseret Generation & Transmission Cooperative, Inc., Portland General Electric Company, Idaho Power Company, and PacifiCorp:

Northern Tier Transmission Group Quarter 1 Stakeholder Meeting

April 12, 2016 10:00 a.m.–3:00 p.m. (PDT)

The above-referenced meeting will be held at: Embassy Suites by Hilton Portland Airport, 7900 NE 82nd Ave., Portland, OR 97220.

The above-referenced meeting is open to stakeholders.

Further information may be found at *http://www.nttg.biz/site/*.

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER16–778, *MATL*
Docket No. ER16–970, *MATL*

For more information, contact Natalie Propst, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8896 or *natalie.propst@ferc.gov*.

Dated: April 7, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016–08474 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–819–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2016–04–02 CP to be effective 4/2/2016.
Filed Date: 4/4/16.
Accession Number: 20160404–5144.
Comments Due: 5 p.m. ET 4/18/16.

Docket Numbers: RP16–820–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 04/04/16 Negotiated Rates—Consolidated Edison Energy Inc. (HUB) 2275–89 to be effective 4/3/2016.
Filed Date: 4/4/16.
Accession Number: 20160404–5213.
Comments Due: 5 p.m. ET 4/18/16.

Docket Numbers: RP16–821–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Assignment of PDC Mountaineer Agreements to Mountaineer Keystone to be effective 4/1/2016.
Filed Date: 4/5/16.
Accession Number: 20160405–5055.
Comments Due: 5 p.m. ET 4/18/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–451–001.

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[2] Secretary of DOE's current delegation of authority to the Commission relating to import and export facilities was renewed by the Secretary's Delegation Order No. 00–004.00A, effective May 16, 2006.

[3] Part 153, subpart B and subpart C.

[4] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[5] The estimates for cost per response are derived using the 2015 FERC average salary plus benefits of $149,489/year (or $72.00/hour). Commission staff finds that the work done for this information collection is typically done by wage categories similar to those at FERC.

Applicants: Golden Pass Pipeline LLC.

Description: Compliance filing Revised Tariff Records per 03/29/2016 Order Re: Orders 587–W and 809 to be effective 4/20/2016.

Filed Date: 4/4/16.

Accession Number: 20160404–5264.

Comments Due: 5 p.m. ET 4/18/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08416 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–520–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Revised Schedule for Environmental Review of the Triad Expansion Project

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the Environmental Assessment (EA) for Tennessee Gas Pipeline Company, L.L.C.'s (Tennessee) Triad Expansion Project. The previous notice of schedule, issued on December 9, 2015, identified April 6, 2016 as the issuance date of the EA. On February 12, 2016, Commission staff received supplemental information regarding a route variation from Tennessee that requires a revised schedule for issuance of the EA.

Schedule for Environmental Review

Issuance of EA—June 15, 2016

90-Day Federal Authorization Decision Deadline—September 13, 2016

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Additional Information

In order to receive notification of the issuance of the final EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: April 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08411 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–433]

Grand River Dam Authority; Notice Granting Waiver Request To Reduce Comment Period From 60 to 30 Days on Draft Amendment Application

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to reduce the comment period from 60 to 30 days for a draft amendment application to permanently modify the reservoir elevation rule curve under Article 401 of the project license.

b. *Project No:* 1494–433.

c. *Date Filed:* March 15, 2016.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Hydroelectric Project.

f. *Location:* The project is located on the Grand River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tamara Jahnke, Grand River Dam Authority, 226 West Dwain Willis Ave., P.O. Box 409, Vinita, OK 74301; telephone (918) 256–5545.

i. *FERC Contact:* B. Peter Yarrington, telephone (202) 502–6129 and email *peter.yarrington@ferc.gov;* or Linda Stewart, telephone (202) 502–6680 and email *linda.stewart@ferc.gov.*

j. *Description of Waiver Request and Decision:* On March 15, 2016, GRDA filed with the Commission: (1) A draft amendment application to permanently modify the reservoir elevation rule curve under Article 401 of the Pensacola Project for Grand Lake O' the Cherokees, (2) a request for a temporary variance contained in the draft amendment application, and (3) a waiver request to reduce from 60 to 30 days the comment period for resource agencies, Indian tribes, and other stakeholders to provide comments to GRDA on its draft of the amendment application mentioned above before GRDA files it with the Commission. The Commission's regulations at 4.38(a)(7) require GRDA to provide resource agencies, Indian tribes, and other stakeholders 60 days to provide comments on the draft amendment application. GRDA requests Commission approval of a 30-day comment period to expedite the Commission's review of any final application filed with the Commission.

The Commission issued a public notice of GRDA's waiver request on March 16, 2016 requesting comments, motions to intervene, and protests by March 31, 2016. The Modoc Tribe of Oklahoma filed a protest and comments on March 31, 2016. However, the protest and comments are related to any final amendment application GRDA may file with the Commission. The protest and comments did not address the waiver request described in the Commission's public notice. No other protests or comments were received. Since there were no objections to GRDA's waiver request to reduce the comment period from 60 to 30 days as described above, the waiver is approved and comments on GRDA's draft amendment application must be submitted to GRDA within the requested 30-day period (due by April 14, 2016).

Note that the Modoc Tribe's concerns and comments contained in its March 31, 2016 letter, have been filed with the Commission and will be considered in the Commission's review of any final amendment application GRDA files with the Commission.

Dated: April 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08412 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2246–000]

Yuba County Water Agency; Notice of Authorization for Continued Project Operation

On April 28, 2014 Yuba County Water Agency, licensee for the Yuba River Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Yuba River Project facilities are located on the Yuba River, North Yuba River, the Middle

Yuba River, and Oregon Creek, in Yuba, Sierra, and Nevada Counties, California.

The license for Project No. 2246 was issued for a period ending March 31, 2016. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2246 is issued to the licensee for a period effective April 1, 2016 through March 31, 2017 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 2017, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, Yuba County Water Agency., is authorized to continue operation of the Yuba River Project, until such time as the Commission acts on its application for a subsequent license.

Dated: March 7, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–08475 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1354–000]

Live Oak Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Grande Prairie Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 27, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 7, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–08473 Filed 4–12–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9944–92–Region 1]

Availability of Final NPDES General Permit for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems in Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final NPDES general permit.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA—Region 1, is providing a notice of availability of the final National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from small Municipal Separate Storm Sewer systems (MS4s) to certain waters of the Commonwealth of Massachusetts. The final Massachusetts small MS4 general permit establishes Notice of Intent (NOI) requirements, prohibitions, and management practices for stormwater discharges from small MS4s in Massachusetts. The final Massachusetts small MS4 general permit reflects modifications to the draft small MS4 general permit released for comment on September 30, 2014 and replaces the 2003 small MS4 general permit for MS4 operators within the Commonwealth of Massachusetts.

DATES: The Massachusetts small MS4 general permit shall be effective on July 1, 2017 and will expire at midnight on June 30, 2022. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review at 1:00 p.m. eastern standard time on April 27, 2016. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings.

FOR FURTHER INFORMATION CONTACT: Newton Tedder, Stormwater and Construction Permits Section OEP 06–4, Environmental Protection Agency, 5 Post Office Square—Suite 100, Boston, Massachusetts 02109–3912; 617–918–1038; *tedder.newton@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

EPA is reissuing three final NPDES permits for discharges of stormwater from small MS4s to certain waters within the Commonwealth of Massachusetts. The three general permits are:

MAR041000—Traditional cities and towns
MAR042000—Non-traditional state, federal, county, and other publicly owned MS4s
MAR043000—Non-traditional transportation MS4s

While these are technically distinct permits, for convenience they have been grouped into a single document and this document refers to the "permit" in the singular. The final general permit, appendices and attachments, as well as response to comments on the draft permit and supplemental fact sheet information are available at *http://www.epa.gov/region1/npdes/stormwater/MS4_MA.html.*

The conditions in the general permit are established pursuant to Clean Water Act (CWA) section 402(p)(3)(iii) to ensure that pollutant discharges from small MS4s are reduced to the Maximum Extent Practicable (MEP), protect water quality, and satisfy the appropriate requirements of the CWA. Further information on the requirements of the permit related to MEP and water quality may be found in EPA's Response to Comments document on the above Web site.

EPA issued a final general permit to address stormwater discharges from small MS4s in Massachusetts and New Hampshire on May 1, 2003. The 2003 general permit required small MS4 operators to develop and implement a Stormwater Management Program (SWMP) designed to control pollutants to the maximum extent practicable and protect water quality. This final general permit for Massachusetts MS4s builds on the requirements of the 2003 general permit. During 2010, EPA drafted two separate Small MS4 general permits to replace the 2003 Small MS4 permit for eligible operators located in Massachusetts; one for operators located in the North Coastal watershed and the other for those located in the Interstate, Merrimack and South Coastal watersheds. Based on comments and information gathered while developing responses, EPA modified the initial draft general permits and issued a draft permit covering all eligible operators in Massachusetts pursuant to 40 CFR 124.6. EPA took public comments on this draft permit from September 30, 2014 to February 27, 2015. EPA received over 150 unique written letters and oral comments on the draft permit. Concurrent with the release of the final permit and supplemental materials EPA will make available a Response to Comments received on the draft permit. The Response to Comments will be available on the EPA Web site listed above. Changes to the permit resulting from public comments include, but are not limited to: Reduction of certain reporting requirements and metrics, reorganization of certain requirements for clarity, and extension of deadlines for certain required tasks and reports within the permit.

Obtaining Authorization

In order for a small MS4 operator to obtain authorization to discharge, it must submit a complete and accurate NOI containing the information in Appendix E of the general permit. The NOI must be submitted on or before September 29, 2017 (90 days from the effective date of the final permit). A small MS4 operator must meet the eligibility requirements of the general permit found in Part 1.2 and Part 1.9 prior to submission of its NOI. A small MS4 operator will be authorized to discharge under the permit upon receipt of written notice from EPA following a public notice of the submitted NOI. EPA will authorize the discharge, request additional information, or require the small MS4 to apply for an alternative permit or an individual permit. NOIs may be submitted electronically to EPA at *stormwater.reports@epa.gov* or sent via regular or overnight mail to: United States Environmental Protection Agency, Stormwater and Construction Permits Section OEP 06–1, 5 Post Office Square—Suite 100, Boston, Massachusetts 02109–3912. A copy of the NOI shall also be sent to MassDEP at the following address: Massachusetts Department of Environmental Protection, One Winter Street—5th Floor, Boston, Massachusetts 02108 ATTN: Frederick Civian, Stormwater Coordinator.

Other Legal Requirements

In accordance with the Endangered Species Act (ESA), EPA has updated the provisions and necessary actions and documentation related to potential impacts to endangered species from discharges and related actions under the Massachusetts small MS4 general permit. EPA has obtained concurrence from the appropriate federal services (U.S. Fish and Wildlife Service and National Marine Fisheries Service) regarding the requirements of this general permit.

In accordance with the National Historic Preservation Act, EPA has established provisions and documentation requirements for operators seeking coverage under the Massachusetts small MS4 general permit to ensure that discharges or actions taken under this permit will not adversely affect historic properties and places.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: April 4, 2016.

H. Curtis Spalding,

Regional Administrator, Region 1.

[FR Doc. 2016–08503 Filed 4–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0335; FRL–9944–91–OW]

Extension of Public Comment Period for the Draft EPA–USGS Technical Report: Protecting Aquatic Life From Effects of Hydrologic Alteration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the draft technical report: *Protecting Aquatic Life from Effects of Hydrologic Alteration.* In response to stakeholder requests, the comment period will be extended for an additional 45 days, from May 3, 2016 to June 17, 2016.

DATES: Comments must be received on or before June 17, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0335, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Diana Eignor, Health and Ecological Criteria Division, Office of Water (Mail Code 4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1143; email address: *eignor.diana@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 1, 2016 (81 FR 10620), EPA and United States Geological Survey (USGS) announced the availability of the draft technical report: *Protecting Aquatic Life from Effects of Hydrologic Alteration,* and opened a 60-day public review and comment period to solicit additional scientific views, data, and information regarding the science and technical approach used in the derivation of the draft technical document.

The original deadline to submit comments was May 2, 2016. This action extends the comment period for 45 days. Written comments must now be received by June 17, 2016. The draft report and other supporting materials may also be viewed and downloaded from EPA's Web site at *https://www.epa.gov/wqc/aquatic-life-ambient-water-quality-criteria#draft.*

Dated: April 6, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–08491 Filed 4–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0234; FRL–9939–82]

Orientation Session for the Chemical Safety Advisory Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a half-day orientation meeting of the new Chemical Safety Advisory Committee (CSAC). At this meeting, entitled "Orientation Session of the Chemical Safety Advisory Committee (CSAC)," the CSAC will consider and review background information on the Toxic Substances Control Act (TSCA), the TSCA Work Plan Chemical Program, and aspects of TSCA risk assessment approaches.

DATES: The meeting will be held on May 11, 2016, from approximately 1:00 p.m. to 5:00 p.m. (EST). This is an open public meeting that will be conducted over the Internet using Adobe Connect. Registration is required to attend this meeting. Please visit: *http://www.epa.gov/csac* to register.

Comments. The Agency encourages written comments to be submitted on or before April 26, 2016, and requests for oral comments be submitted on or before May 4, 2016. Written comments may be submitted until noon on May 10, 2016; however, anyone submitting written comments after April 26, 2016, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. under **SUPPLEMENTARY INFORMATION.** *Webcast.* Please refer to the following Web site for information on how to access the meeting webcast: *http://www.epa.gov/csac.*

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA time to process your request.

ADDRESSES: *Meeting:* This meeting will be webcast. Please refer to the following Web site for information on how to access the webcast: *http://www.epa.gov/csac.*

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0234, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPPT Docket, Environmental Protection Agency Docket Center (EPA/DC) (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets, is available at *http://www.epa.gov/dockets.*

Requests to present oral comments, and requests for special accommodations. Submit requests for special accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Scott Lynn, Ph.D., DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–2631; email address: *lynn.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those involved in the manufacture, processing, distribution, disposal, and/or the assessment of risks involving chemical substances and mixtures. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through regulations.gov or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPPT–2015–0234 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages written comments be submitted, using the instructions in **ADDRESSES** and Unit I.B., on or before

April 26, 2016, to provide CSAC the time necessary to consider and review the written comments. Written comments will be accepted until noon on May 10, 2016; however, anyone submitting written comments after April 26, 2016, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

2. *Oral comments.* The Agency encourages each individual or group wishing to make brief oral comments to CSAC to submit a request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 4, 2016, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until noon May 9, 2016, to the extent that time permits, the Chair of the CSAC may permit the presentation of oral comments. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before CSAC are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should provide electronic copies of his or her comments and presentation for distribution to CSAC.

II. Background

A. Purpose of CSAC

Office of Prevention Pesticides and Toxics (OPPT) manages programs under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, and the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.* Under these laws, EPA evaluates new and existing chemical substances and their risks, and finds ways to prevent or reduce pollution before it is released into the environment. OPPT also manages a variety of environmental stewardship programs that encourage companies to reduce and prevent pollution.

The CSAC was established under the Federal Advisory Committee Act, section 9(a), to provide advice and recommendations on the scientific basis for risk assessments, methodologies, and pollution prevention measures or approaches. The CSAC is composed of 10 members who serve as regular government employees (RGEs) or special government employees (SGEs). A copy of the CSAC charter is available on the EPA Web site at *http://www.epa.gov/csac* and in the docket at *http://www.regulations.gov.*

B. Public Meeting

During the meeting scheduled for May 11, 2016, entitled "Orientation Session of the Chemical Safety Advisory Committee (CSAC)," the CSAC will receive a background briefing including an overview of priority projects within EPA's OPPT, the TSCA, the TSCA Work Plan Chemical Program, and aspects of OPPT's risk assessment approaches. The briefing will provide an orientation for this new committee in preparation for upcoming reviews. The EPA is not presenting a charge or questions for the committee's deliberation at this meeting.

C. CSAC Documents and Meeting Minutes

EPA's background documents, related supporting materials, CSAC composition (*i.e.*, members for this meeting), and the meeting agenda will be available approximately 3 weeks prior to the meeting. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents and certain other related documents that might be available at *http://www.regulations.gov* and the following Web site: *http://www.epa.gov/csac.*

CSAC will prepare meeting minutes approximately 90 days after the meeting. The meeting minutes will be posted in the OPPT Docket at *http://www.regulations.gov* and the following Web site: *http://www.epa.gov/csac.*

Authority: 5 U.S.C. App. 2§ 9 (c).

Dated: December 16, 2015.

David J. Dix,

Director, Office of Science Coordination and Policy.

This document was received for publication by the Office of the Federal Register on April 8, 2016.

[FR Doc. 2016–08496 Filed 4–12–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0700, 3060–1084, 3060–1088, 3060–xxxx]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 13, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control: 3060–0700.

Title: Open Video Systems Provisions, FCC Form 1275.

Form Number: FCC Form 1275.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, Local or Tribal Government.

Number of Respondents and Responses: 280 respondents; 4,672 respondents.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Estimated Time per Response: 0.25 to 20 hours.

Total Annual Burden: 9,855 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in section 302 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Section 302 of the 1996 Telecommunications Act provides for specific entry options for telephone companies wishing to enter the video programming marketplace, one option being to provide cable service over an "open video system" ("OVS"). The rule sections that are covered by this collection relate to OVS.

OMB Control Number: 3060–1084.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CARE).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,621 respondents; 574,468 responses.

Estimated Time per Response: 1 minute (.017 hours) to 20 minutes (.33 hours).

Frequency of Response: Recordkeeping and annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these information requirements are found in sections 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 222, 258, and 303(r).

Total Annual Burden: 47,693 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is not an issue as individuals and/or households are not required to provide personally identifiable information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the 2005 Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (2005 Report and Order), CG Docket No. 02–386, FCC 05–29, which was released on February 25, 2005, the Commission adopted rules governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). The Commission concluded that mandatory, minimum standards are needed in light of record evidence demonstrating that information needed by carriers to execute customer requests and properly bill customers is not being consistently provided by all LECs and IXCs. Specifically, the 2005 Report and Order requires LECs to supply customer account information to IXCs when: (1) The LEC places an end user on, or removes an end user from, an IXC's network; (2) an end user presubscribed to an IXC makes certain changes to her account information via her LEC; (3) an IXC requests billing name and address information for an end user who has usage on an IXC's network but for whom the IXC does not have an existing account; and (4) a LEC rejects an IXC-initiated PIC order. The 2005 Report and Order required IXCs to notify LECs when an IXC customer informs an IXC directly of the customer's desire to change IXCs. In the accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on whether to require the exchange of customer account information between LECs. In December 2007, the Commission declined to adopt mandatory LEC-to-LEC data exchange requirements.

OMB Control Number: 3060–1088.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05–338, FCC 06–42.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and Individuals or households.

Number of Respondents and Responses: 5,340,000 respondents; 6,054,155 responses.

Estimated Time per Response: 3 minutes (.05 hours) to 30 minutes (.50 hours).

Frequency of Response: Annual, monthly, and on occasion reporting requirements; Recordkeeping requirement; and Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The authorizing statutes for this information collection are: Telephone Consumer Protection Act of 1991, Public Law 102–243. 105 Stat. 2394 (1991); Junk Fax Prevention Act, Public Law 109–21, 119 Stat. 359 (2005).

Total Annual Burden: 3,672,250 hours.

Total Annual Cost: $928,042.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, "Informal Complaints, Inquiries and Requests for Dispute Assistance," which became effective on September 24, 2014.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy5FImpact5FAssessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On April 5, 2006, the Commission adopted a Report and Order and Third Order on Reconsideration, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005, CG Docket Nos. 02–278 and 05–338, FCC 06–42, which modified the Commission's facsimile advertising rules to implement the Junk Fax Prevention Act. The Report and Order and Third Order on Reconsideration contained information collection requirements pertaining to: (1) Opt-out Notice and Do-Not-Fax Requests Recordkeeping in which the rules require senders of unsolicited facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender; (2) Established Business Relationship Recordkeeping whereas the Junk Fax Prevention Act provides that the sender, *e.g.*, a person, business, or a nonprofit/institution, is prohibited from faxing an unsolicited advertisement to a facsimile machine unless the sender has an "established business relationship" (EBR) with the recipient; (3) Facsimile Number Recordkeeping in which the Junk Fax Prevention Act provides that an EBR alone does not entitle a sender to fax an advertisement to an individual or business. The fax number must also be provided voluntarily by the recipient; and (4) Express Invitation or Permission Recordkeeping where in the absence of an EBR, the sender must obtain the prior express invitation or permission from the consumer before sending the facsimile advertisement.

On October 14, 2008, the Commission released an Order on Reconsideration, FCC 08–239, addressing certain issues raised in petitions for reconsideration and/or clarification filed in response to the Commission's Report and Order and Third Order on Reconsideration (Junk Fax Order), FCC 06–42. In document FCC 08–239, the Commission clarified that: (1) Facsimile numbers compiled by third parties on behalf of the facsimile sender will be presumed to have been made voluntarily available for public distribution so long as they are obtained from the intended recipient's own directory, advertisement, or Internet site; (2) reasonable steps to verify that a recipient has agreed to make available a facsimile number for public distribution may include methods other than direct contact with the recipient; and (3) a description of the facsimile sender's opt-out mechanism on the first Web page to which recipients are directed in the opt-out notice satisfies the requirement that such a description appear on the first page of the Web site.

The Commission believes these clarifications will assist senders of facsimile advertisements in complying with the Commission's rules in a manner that minimizes regulatory compliance costs while maintaining the protections afforded consumers under the Telephone Consumer Protection Act (TCPA).

OMB Control Number: 3060–XXXX.

Title: Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules.

Form Number: None.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 11 respondents; 11 responses.

Estimated Time per Response: 0.25 hours (15 minutes).

Frequency of Response: Third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 3 hours.

Total Annual Costs: No cost.

Obligation to Respond: Required in order to monitor regulatory compliance. The statutory authority for this collection of information is contained in sections 4, 303, 614 and 615 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The information collection imposes a notification requirement on certain small cable systems that become ineligible for exemption from the requirement to carry high definition broadcast signals in HD (adopted in FCC 15–65). In particular, the information collection requires that, beginning December 12, 2016, at the time a small cable system utilizing the HD carriage exemption offers any programming in HD, the system must give notice that it is offering HD programming to all broadcast stations in its market that are carried on its system. Cable operators must also keep records of such notification. This information collection requirement allows affected broadcast stations to monitor compliance with the requirement that cable operators transmit high definition broadcast signals in HD.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–08441 Filed 4–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0017, 3060–1086]

Information Collections Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for a revision of a currently approved public information collection pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, Office of the Managing Director, at (202) 418–2918, or email: *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0017.

OMB Approval Date: March 21, 2016.

OMB Expiration Date: March 31, 2019.

Title: Application for Media Bureau Audio and Video Service Authorization, FCC 2100, Schedule D.

Form Number: FCC Form 2100, Schedule D.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 550 respondents; 550 responses.

Estimated Hours per Response: 1.5 hours per response.

Frequency of Response: One time reporting requirement; On occasion reporting requirement.

Total Annual Burden: 825 hours.

Total Annual Cost: $66,446.

Obligation to Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

Nature and Extend of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In FCC 15–175, low power television and TV translator stations be permitted to share a channel. FCC Form 2100, Schedule D will be used to license channel sharing between these types of stations. FCC Form 2100, Schedule D was modified to allow applicants to propose that their stations be licensed on a shared basis.

OMB Control Number: 3060–1086.

OMB Approval Date: March 21, 2016.

OMB Expiration Date: March 31, 2019.

Title: Section 74.787 Digital Licensing; § 74.790, Permissible Service of Digital TV Translator and LPTV Stations; § 74.794, Digital Emissions, and § 74.796, Modification of Digital Transmission Systems and Analog Transmission Systems for Digital Operation; § 74.798, LPTV Digital Transition Consumer Education Information, Protection of Analog LPTV.

Form Number: Not applicable.

Respondents: Business or other for profit entities; not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 8,445 respondents; 27,386 responses.

Estimated Hours per Response: 0.50–4 hours.

Frequency of Response: Recordkeeping requirement; One-time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 56,386 hours.

Total Annual Cost: $69,033,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 301 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: December 18, 2015, the Commission released a Third Report and Order and Fourth Notice of Proposed Rulemaking, In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, MB Docket No. 03–185, FCC 15–175. This document contains final rules and policies for a digital-to-digital replacement digital replacement translator to permit full power television stations to continue to provide service to viewers that may have otherwise lost service as a result of the station being "repacked" in the Commission's incentive auction process.

47 CFR 74.787(a)(5)(v) states that an application for an digital to digital replacement translator may be filed by a full power television station that can demonstrate that a portion of its digital service area will not be served by its full, post-incentive auction digital facilities. The service area of the replacement translator shall be limited to only a demonstrated loss area.

However, an applicant for a replacement digital television translator may propose a de minimis expansion of its full power pre-transition analog service area upon demonstrating that it is necessary to replace its post-incentive auction digital loss area.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2016–08440 Filed 4–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0678, 3060–0937]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 13, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0678.

Title: Part 25 of the Federal Communications Commission's Rules: Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations.

Form Nos.: FCC Form 312; Schedule A; Schedule B; Schedule S; FCC Form 312–EZ; FCC Form 312–R.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,924 respondents; 4,972 responses.

Estimated Time per Response: 0.5–80 hours per response.

Frequency of Response: On occasion, one time, and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721.

Total Annual Burden: 34,099 hours.

Annual Cost Burden: $10,617,860.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information. Certain information collected regarding international coordination of satellite systems is not routinely available for public inspection pursuant to 5 U.S.C. 552(b) and 47 CFR 0.457(d)(vii).

Needs and Uses: On December 17, 2015, the Commission released a Second Report and Order, FCC 15–167, titled, "In the Comprehensive Review of Licensing and Operating Rules for Satellite Services." In this Report and Order, the Commission adopted comprehensive changes to 47 CFR part 25, which governs licensing and operation of space stations and earth stations for the provision of satellite communication services. Many of the amendments are substantive changes intended to give licensees greater operational flexibility.

The information collection requirements in this collection are needed to determine the technical, legal, and other qualifications of applicants and licensees to operate a radio station and to determine whether grant of an authorization serves the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide communications services in the United States. Therefore, the Commission would not be able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization Basic Telecom Agreement.

OMB Control Number: 3060–0937.

Title: Establishment of a Class A Television Service, MM Docket No. 00–10.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion and quarterly reporting requirements.

Number of Respondents and Responses: 430 respondents; 10,850 responses.

Estimated Time per Response: 0.017 hours–52 hours.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

Total Annual Burden: 202,133 hours.

Total Annual Cost: $1,911,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On November 29, 1999, the Community Broadcasters Protection Act of 1999 (CBPA), Public Law 106–113, 113 Stat. Appendix I at pp. 1501A–594–1501A–598 (1999), codified at 47 U.S.C. 336(f), was enacted. That legislation provided that a low power television (LPTV) licensee should be permitted to convert the secondary status of its station to the new Class A status, provided it can satisfy certain statutorily-established criteria. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licenses and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low power station.

The CBPA sets out certain certification and application procedures for LPTV licensees seeking Class A designation, prescribes the criteria LPTV licensees must meet to be eligible for Class A licenses, and outlines the interference protection Class A applicants must provide to analog, digital, LPTV and TV translator stations.

The CBPA directs that Class A stations must comply with the operating requirements for full-service television broadcast stations. Therefore, beginning on the date of its application for a Class A license and thereafter, a station must be "in compliance" with the Commission's operating rules for full-service television stations, contained in 47 CFR part 73.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–08439 Filed 4–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety and Homeland Security Bureau; Federal Advisory Committee Act; Task Force on Optimal Public Safety Answering Point Architecture

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice advises interested persons that the Federal Communications Commission's (FCC) Task Force on Optimal Public Safety Answering Point (PSAP) Architecture (Task Force) will hold its seventh meeting.

DATES: May 6, 2016.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Timothy May, Federal Communications Commission, Public Safety and Homeland Security Bureau, 202–418–1463, email: *timothy.may@fcc.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be held on May 6, 2016, from 1:00 p.m. to 4:00 p.m. in the Commission Meeting Room of the FCC, Room TW–305, 445 12th Street SW., Washington, DC 20554. The Task Force is a Federal Advisory Committee that studies and reports findings and recommendations on PSAP structure, architecture, operations, and funding to promote greater efficiency of PSAP operations, security, and cost containment during the deployment of Next Generation 911 systems. On December 2, 2014, pursuant to the FACA, the Commission established the Task Force charter for a period of two years, through December 2, 2016. At this meeting, the Task Force will hear overview presentations of 2016 tasks from the Task Force's three working groups; specifically Working Group 1—Optimal Approach to Cybersecurity, Working Group 2—Optimal Approach to NG911 Architecture Implementation, and Working 3—Optimal Approach to NG911 Resource Allocation.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *https://www.fcc.gov/general/live.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs at (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation requested. In addition, please include a way the FCC may contact you if it needs more information. Please allow at least five days' advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–08438 Filed 4–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012308–001.

Title: MOL/CMA CGM Japan/USWC Slot Charter Agreement.

Parties: CMA CGM S.A. and Mitsui O.S.K. Lines, Ltd.

Filing Party: Eric C. Jeffrey; Nixon Peabody LLP; 799 9th Street NW., Suite 500; Washington, DC; 20001.

Synopsis: The amendment increases the number of slots that MOL will charter to CMA CGM and revises the termination date.

Agreement No.: 012398.

Title: CMA CGM/APL USEC–ISC-Middle East Space Charter Agreement.

Parties: CMA CGM S.A.; and APL Co. Pte Ltd. and American President Lines, Ltd. (collectively "APL").

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500; Washington, DC 20001.

Synopsis: The agreement authorizes CMA CGM to charter slots to APL in the trade between ports on the U.S. East Coast, on the one hand, and ports in India, Pakistan, Egypt, and Saudi Arabia, on the other hand.

Agreement No.: 201175–006.

Title: Port of NY/NJ Sustainable Services Agreement.

Parties: APM Terminals Elizabeth, LLC; GCT Bayonne LP; GCT New York LP; Maher Terminals LLC; and Port Newark Container Terminal LLC.

Filing Party: Carol N. Lambos, Esq.; The Lambos Firm, LLP; 303 South Broadway Suite 410; Tarrytown, NY 10591.

Synopsis: The amendment would add Red Hook Container Terminal, LLC as a party to the agreement.

Agreement No.: 201232.

Title: NYSA–ILA Assessment Agreement.

Parties: International Longshoremen's Association and New York Shipping Association.

Filing Parties: Donato Caruso, Esq.; The Lambos Firm, LLP; 303 South Broadway, Suite 410; Tarrytown, NY 10591 and Andre Mazzola, Esq.; Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

Synopsis: The agreement consolidates amended Agreement No. 201162 into a single agreement.

By Order of the Federal Maritime Commission.

Dated: April 8, 2016.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–08483 Filed 4–12–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 28, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Jeffery F. Teague and Sarah Shell Teague, as co-trustees of the Jeffrey F. Teague and Sarah Shell Teague Joint Revocable Trust; Susan Shell Allison, individually, and as trustee of the Susan Allison Testamentary Trust, with power to vote shares owned by her two minor children, all of Benton, Arkansas; Joseph Shell, individually, and as trustee of the Joe Shell Testamentary Trust, with power to vote shares owned by the Hanna Shell Irrevocable Trust, and by his minor child, all of Batesville, Arkansas; Jay Shell, with power to vote shares held by Carolyn Southerland Shell Testamentary Trust and by High Point Farms; Jayme Shell; Jessica Shell; Mary K. Shell, all of Batesville, Arkansas; and John Allison, and Anna Allison,* both of Benton, Arkansas; all as members of the Allison-Shell-Teague family control group; to acquire voting shares of Citizens Bancshares of Batesville, Inc., and thereby indirectly acquire voting shares of The Citizens Bank, both in Batesville, Arkansas.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Philip Ray Forstrom 2012 Irrevocable Trust [SLAT–1] under agreement dated December 6, 2012; Marsha Ann Forstrom, as co-trustee and individually, and Perry Forstrom, co-trustee; and the Marsha Ann Forstrom 2012 Irrevocable Trust [SLAT–1] under agreement dated December 26, 2012; Philip R. Forstrom, all of Henderson, Nevada, and John Forstrom,* Independence, Minnesota, co-trustees, all as members of the Forstrom family shareholder group; to retain voting shares of Forstrom Bancorporation, Inc., and thereby indirectly retain voting shares of Citizens Alliance Bank, both in Clara City, Minnesota, and First Bank of Lincoln, Lincoln, Montana.

Board of Governors of the Federal Reserve System, April 8, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–08461 Filed 4–12–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0068; Docket 2016–0053; Sequence 3]

Submission for OMB Review; Economic Price Adjustment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management

and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning economic price adjustment. A notice was published in the **Federal Register** at 81 FR 3420 on January 21, 2016. No comments were received.

DATES: Submit comments on or before May 13, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0068, Economic Price Adjustment". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0068, Economic Price Adjustment" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0068, Economic Price Adjustment.

Instructions: Please submit comments only and cite Information Collection 9000–0068, Economic Price Adjustment, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause 16.203, Fixed-price contracts with economic price adjustment, and associated clauses at 52.216–2, 52.216–3, and 52.216–4, provide for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

Respondents: 4,497.

Responses per Respondent: 1.

Annual Responses: 4,497.

Hours per Response: 1.5.

Total Burden Hours: 6,746.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

Dated: April 7, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–08399 Filed 4–12–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115; Docket 2016–0053; Sequence 22]

Information Collection; Notification of Ownership Changes

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning notification of ownership changes.

DATES: Submit comments on or before June 13, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0115, Notification of Ownership Changes by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0115, Notification of Ownership Changes". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0115, Notification of Ownership Changes" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405–0001. ATTN: Ms. Flowers/IC 9000–0115, Notification of Ownership Changes.

Instructions: Please submit comments only and cite Information Collection 9000–0115, Notification of Ownership Changes, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kathyln Hopkins, Procurement Analyst, Office of Acquisition Policy, GSA, 202–969–7226 or email *kathyln.hopkins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–19, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 138.

Responses per Respondent: 1.

Annual Responses: 138.

Hours per Response: 1.

Total Burden Hours: 138.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: April 7, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–08401 Filed 4–12–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026; Docket 2016–0053; Sequence 2]

Submission for OMB Review; Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning change order accounting. A notice was published in the **Federal Register** at 81 FR 3420 on January 21, 2016. One comment was received.

DATES: Submit comments on or before May 13, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0026, Change Order Accounting, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0026, Change Order Accounting" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information 9000–0026, Change Order Accounting". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0026, Change Order Accounting" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0026, Change Order Accounting.

Instructions: Please submit comments only and cite Information Collection 9000–0026, Change Order Accounting, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–208–4949, or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 43.205 allows a contracting officer, whenever the estimated cost of a change or series of related changes under a contract exceeds $100,000, to assert the right in the clause at FAR 52.243–6, Change Order Accounting, to require the contractor to maintain separate accounts for each change or series of related changes. Each account shall record all incurred segregable, direct costs (less allocable credits) of work, changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Analysis of Public Comments

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Comment: The commenter suggested ways to improve the utility of the Information Collection. The recommendations are designed to enhance the data collected regarding the administration of change orders. If adopted, the commenter stated the proposed changes would provide for the collection of essential data, in a more readily accessible format that can assist Executive Branch managers and facilitate the conduct of essential Congressional oversight.

Response: This comment is out of scope because the commenter wants to improve the utility of the Information Collection. They did not express an opinion on whether the stated number of burden hours is out of sync with what they believe to be the actual number of hours a contractor expends to comply with the clause.

C. Annual Reporting Burden

Respondents: 8,850.
Responses per Respondent: 12.
Annual Responses: 106,200.
Hours per Response: 1.
Total Burden Hours: 106,200.
Frequency of Collection: On occasion.
Affected Public: Businesses or other for-profit entities and not-for-profit institutions.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: April 7, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–08447 Filed 4–12–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0074; Docket 2016–0053; Sequence 19]

Information Collection; Contract Funding—Limitation of Costs/Funds

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning limitation of costs/funds.

DATES: Submit comments on or before June 13, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0074, Contract Funding—Limitation of Costs/Funds by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0074, Contract Funding—Limitation of Costs/Funds". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0074, Contract Funding—Limitation of Costs/Funds" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0074, Contract Funding—Limitation of Costs/Funds.

Instructions: Please submit comments only and cite Information Collection 9000–0074, Contract Funding—Limitation of Costs/Funds, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kathlyn Hopkins, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA 202–969–7226 or email *kathlyn.hopkins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under incrementally funded Federal contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notification, the contractors must provide a revised estimate of total cost.

B. Annual Reporting Burden

Respondents: 194,256.
Responses per Respondent: 5.
Total Annual Responses: 971,280.
Hours per Response: 0.333.
Total Burden Hours: 320,522.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0074, Contract Funding—Limitation of Costs/Funds, in all correspondence.

Dated: April 7, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmnetwide Policy.

[FR Doc. 2016–08400 Filed 4–12–16; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice CSE–2016–03; Docket No. 2016–0002; Sequence 8]

GSA Labor-Management Relations Council Meeting Cancellation

AGENCY: Office of Human Resources Management (OHRM), General Services Administration (GSA).

ACTION: Notice of meeting cancellation.

SUMMARY: The GSA Labor-Management Relations Council (GLMRC) previously announced in its March 25, 2016 **Federal Register** notice that it planned to hold a meeting Tuesday, April 12, 2016 and Wednesday, April 13, 2016. The meeting is cancelled.

DATES: April 13, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Lucak, GLMRC Designated Federal Officer (DFO) at the General Services Administration, OHRM, 1800 F Street NW., Washington, DC. 20405, telephone at 202–739–1730, or email at *gmlrc@gsa.gov.*

SUPPLEMENTARY INFORMATION: The GSA Labor-Management Relations Council (GLMRC) previously announced in its March 25, 2016 **Federal Register** notice (81 FR 16183) that it planned to hold a meeting Tuesday, April 12, 2016 and Wednesday, April 13, 2016. The meeting is cancelled. A new notice will be posted in the **Federal Register** announcing the date and time when rescheduled.

Dated: April 7, 2016.

Renee Y. Jones,

Office of Human Resources Management, OHRM Director (Acting), Office of HR Strategy and Services, Center for Talent Engagement (COE4), General Services Administration.

[FR Doc. 2016–08463 Filed 4–12–16; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: *"AHRQ ACTION III—Measurement for Performance Improvement in Physician Practices."* In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 13, 2016.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

AHRQ ACTION III—Measurement for Performance Improvement in Physician Practices

This two-year project is an important first step to fully understanding measurement for performance improvement in medical groups. This exploratory research is expected to set the stage for informing future research and policy discussions, both of which could ultimately have a more direct impact on providers, payers, and patients. As a critical first step this research breaks new ground in an important area of health care research by looking at the current landscape to better understand how medical groups are using measurement internally to improve performance and what that means to them, and how internal measurement relates to external measurement obligations and identifying where the gaps are.

Project success for this exploratory work will be more relevant given the complete context of the current landscape of performance measurement, gleaned through an environmental scan, expert input, and qualitative data collection. Ultimately, success will be measured by our ability to answer the research questions that are guiding this research project (see below).

The overall goal of AHRQ's Measurement for Performance Improvement in Physician Practices project is to identify the current gaps in our knowledge about how practices are using data, if at all, for performance improvement. AHRQ has developed this project to address the lack of current evidence on internal performance measurement in medical groups, identifying the following research questions:

- What gaps exist in the research literature regarding management for performance improvement in medical groups?
- What factors, both internal and external, drive efforts to use measurement to improve medical group performance?
- How are measures used to support internal management and improvement processes?
- What additional activities support use of internal performance measures?
- How are internal performance measures derived and reported? What specific measures, benchmarks, and comparisons are used?
- How have physicians responded to these measurement processes?
- What are the perceived benefits of internal measurement activities? What types of costs and other burdens are directly associated with internal measurement? How feasible is it to specify actual costs of reporting?
- What implications does evidence on internal measurement for performance improvement have for payers, policy makers, executives in delivery systems, and clinical leaders?

Specific Project Objectives

- Identify specific measures/metrics used internally by medical groups to assess performance and support improvement activities.
- Describe how internal measurement activities/measures are used in medical groups to support improvement in individual, team, or organizational performance including, but not limited to, how these activities are tied to "internal" financial incentives.
- Identify types of costs and other types of burdens (*e.g.* staff resources, IT resources, etc.), directly related to internal measurement and reporting activities. Assess the feasibility of capturing information on costs and burdens of internal and external performance measurement, and, if feasible, collect data on the actual costs and other associated burdens of internal and external performance measurement.
- Based on the findings, identify implications, potential impacts, and future research opportunities for payers, regulators, and medical groups regarding internal measurements for performance improvement.

Efforts to improve performance among health care providers through measurement and reporting have evolved over time and have taken many forms and many names. For example, Triple Aim, Public Reporting, Performance Measurement, Quality Improvement, Pay for Performance are all common concepts today. And, most health care providers, including medical groups, are monitoring their performance using a wide array of quality measures that reflect care processes, clinical outcomes, and patient experiences. Increasing numbers of providers are required to report their performance on quality measures by payers such as the Centers for Medicare and Medicaid Services (CMS) and external regulatory bodies such as the National Committee for Quality Assurance (NCQA) or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

Little is known, however, about how providers make use internally of measures that are required by external bodies for payment or reporting. Nor is it known what other measures providers collect and use to improve performance. This project aims to fill this knowledge gap. In doing so, it may also inform payment and reporting initiatives by providing indications of the degree to which providers view externally mandated measures as valuable for their internal quality assessment and reporting efforts.

As an initial step in understanding the landscape of measurement for performance improvement, this research will look to understand how medical groups define and measure performance improvement.

This work is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

For this study, AHRQ will conduct field data collection through semi-structured in-depth interviews. The unit of analysis for this work is the medical group. To understand measurement for performance improvement in each medical group, AHRQ will interview up to 5 administrators and frontline clinicians per medical group. Interviews with both administrators and clinicians will be facilitated using the same protocol. As discussed below, given the different levels of involvement and experience with internal performance measurement, interviews will vary in detail and thus length. But, as AHRQ works to uncover the story of each medical group involved in the study, the same guiding protocol will apply. AHRQ will audio-record and professionally transcribe each interview conducted. And, all interviews will be loaded into Dedoose for coding and analysis.

The information collected in the data collection effort will be used for one main purpose: Identify the current gaps in internal measurement in physician practices. The results from the data collection will give AHRQ a snapshot on the current practices being undertaken for internal performance measurement and inform best next steps to move beyond this exploratory research phase.

The intended target audiences expected to benefit most from the project include the medical groups using this information to improve performance, the health care professionals who work in these medical groups working to improve their care to patients, and the patients that can benefit from improved care. One way this research could benefit these audiences is by informing payment and reporting initiatives by providing indications of the degree to which providers view externally mandated measures as valuable for their internal quality assessment and reporting efforts.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the participants' time to take part in this research. To recruit medical groups to participate, AHRQ will engage groups in a short call to assess interest and obtain a commitment to participate. AHRQ expects the need to reach out to approximately 100 medical groups to obtain a sample of 45 groups that are conducting some type of measurement for internal performance improvement, are interested in taking part, and are able to take part during the data collection window. In-depth, semi-structured qualitative interviews will then be conducted with up to 5 staff members at 45 medical groups using a single protocol. AHRQ will target small (2–9 eligible professionals (EP)), medium (10–24 EPs), and large (25+ EPs) medical groups from across the Unites States. The goal is to recruit approximately 3 administrators and 2 frontline clinicians in each Group, understanding that depending on the size and organization of the medical group staff members may operate in multiple roles.

Based on the pilot study conducted for this project, AHRQ estimates that the recruitment call will average 15 minutes, and that the longest interviews will be 1.5 hours. These longest interviews will be with the highest level administrators working on internal performance measurement at the most complex medical groups. AHRQ believes these will be the largest medical groups that are part of complex systems and payment relationships. These complex organizational relationships will require more time to understand in order to understand the place, role, and operation of internal measurement for performance improvement within the group. For equivalent administrators from medium and small groups, AHRQ estimates the longest interviews will be 1.25 hours. For all other administrators and frontline clinicians, AHRQ estimates the interviews will be 1 hour.

The total annualized burden is estimated to be 295 hours. Again, interviews with both frontline clinicians and all medical group administrators will use the same protocol. The screening call will be an informal conversation in which AHRQ looks to learn if the medical group self-identifies as using measurement for performance improvement and provides consent to take part. AHRQ will answer any questions the medical group has about the study on this call and confirm some basic, publicly available background information about the group that AHRQ has obtained is accurate and up to date. This background information will help put the information learned during the interview in better context. The types of background information AHRQ is looking at includes medical group size, organizational structure, specialty mix, and payment relationships.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Hours per response	Total burden hours
Frontline clinicians	90	1	90
Medical group administrators	235		
Medical group administrators: Administrator with authority to agree to participate in the study	100	0.25	25
Medical group administrators: Initial, highest level administrators	45	1.5	67.5
Medical group administrators: All other administrators	90	1.25	112.5

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Hours per response	Total burden hours
Total	325	NA	295

Exhibit 2 shows the estimated annualized cost burden associated with the participants' time to take part in this research. The total cost burden is estimated to be $27,270.45.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Interviewee type	Total burden hours	Average hourly age rate *	Total cost burden
Frontline clinicians	90	$103.54 [a]	$9,318.60
Medical group administrators	205	87.57 [b]	17,951.85
Total	295	NA	27,270.45

[a] Based on the average hourly wage for one physician (29–1060; $103.54).
[b] Based on the average hourly wage for one Chief Executive (11–1011; $87.57).
* National Industry-Specific Occupational Employment and Wage Estimates, May 2014, from the Bureau of Labor Statistics (available at *http://www.bls.gov/oes/current/naics4_621100.htm* [for Offices of Physicians, NAICS 622100]).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Sharon B. Arnold,
Acting Director.

[FR Doc. 2016–08403 Filed 4–12–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[60Day–16–0041; Docket No. ATSDR–2016–0005]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the "National Amyotrophic Lateral Sclerosis (ALS) Registry." The National ALS Registry collects information from persons with ALS to better describe the prevalence and potential risk factors for ALS.

DATES: Written comments must be received on or before June 13, 2016.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR–2016–0005 by any of the following methods:

- *Federal eRulemaking Portal:* Regulation.gov. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations, gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

The National Amyotrophic Lateral Sclerosis (ALS) Registry (OMB Control No. 0923–0041, Expiration Date 09/30/2016)—Revision—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

On October 10, 2008, President Bush signed S. 1382: ALS Registry Act which amended the Public Health Service Act to provide for the establishment of an Amyotrophic Lateral Sclerosis (ALS) Registry. The activities described are part of the ongoing effort to maintain the National ALS Registry.

First approved in 2010 for self-registration, the primary goal of the surveillance system/registry remains to obtain reliable information on the incidence and prevalence of ALS and to better describe the demographic characteristics (age, race, sex, and geographic location) of persons with ALS (PALS). Those interested in participating in the National ALS Registry must answer a series of validation questions and if determined to be eligible they can register.

The secondary goal of the surveillance system/registry is to collect additional information on potential risk factors for ALS, including, but not limited to, family history of ALS, smoking history, military service, residential history, life-time occupational exposure, home pesticide use, hobbies, hormonal and reproductive history (women only), caffeine use, trauma, health insurance, open-ended supplemental questions, and clinical signs and symptoms. After registration, participants complete as many as 16 voluntary survey modules, each taking five minutes (maximum 80 minutes). In addition, in Year 1, a disease progression survey for new registrants is completed at 0, 3, and 6 months. In Years 2 and 3, the disease progression survey is repeated at the yearly anniversary and at 6 months. For burden estimation, the number of disease progression survey responses per year has been rounded up to 3 times.

A biorepository component is being added to increase the value of the National ALS Registry to researchers. As part of registration the participant can request additional information about the biorepository and provide additional contact information. A geographically representative sample will be selected to provide specimens. There are two types of specimen collections, in-home and postmortem. The in-home collection includes blood, urine, hair and nails. The postmortem collection includes the brain, spinal cord, cerebral spinal fluid (CSF), bone, muscle, and skin.

In addition to fulfilling the two-part Congressional mandate, the Registry is designed to be a tool for ALS researchers. Now that the Registry has matured, ATSDR will make data and specimens available to approved researchers and has added a respondent type. Researchers can request access to specimens, data, or both collected by the National ALS Registry for their research projects. ATSDR will review applications for scientific validity and human subjects' protection and make data/specimens available to approved researchers.

ATSDR is collaborating with ALS service organizations to conduct outreach activities through their local chapters and districts as well as on a national level. They provide ATSDR with information on their outreach efforts in support of the Registry on a monthly basis.

There are no costs to the respondents other than their time. The total number of burden hours requested is 1,986 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Person with ALS	ALS Case Validation Questions	1,670	1	2/60	56
	ALS Case Registration Form	1,500	1	10/60	250
	Voluntary Survey Modules	750	1	80/60	1,000
	Disease Progression Survey	750	3	5/60	188
	ALS Biorepository Specimen Processing Form.	325	1	1	325
Researchers	ALS Registry Research Application Application Form.	36	1	30/60	18
	Annual Update Form	24	1	15/60	6
ALS Service Organization	Chapter/District Outreach Reporting Form	135	12	5/60	135
	National Office Outreach Reporting Form	2	12	20/60	8
Total					1,986

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–08443 Filed 4–12–16; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH): Notice of Charter Re-establishment

Pursuant to Executive Order 13708 and the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, the Director, Centers for Disease Control and Prevention (CDC) announces the re-establishment of the Advisory Board on Radiation and Worker Health, Department of Health and Human Services, extending through September 30, 2017.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., MS E–20, Atlanta, Georgia 30329–4027, telephone (513) 533–6800, toll free: 1–800–CDC–INFO, email: *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–08517 Filed 4–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), PAR 15–353, Centers for Agricultural Safety and Health.

Times and Dates:

8:30 a.m.–8:30 p.m., EDT, May 9, 2016 (Closed)
8:30 a.m.–8:30 p.m., EDT, May 10, 2016 (Closed)
8:30 a.m.–8:30 p.m., EDT, May 11, 2016 (Closed)
8:30 a.m.–8:30 p.m., EDT, May 12, 2016 (Closed)
8:30 a.m.–8:30 p.m., EDT, May 13, 2016 (Closed)

Place: Crowne Plaza Atlanta Perimeter at Ravinia, 4355 Ashford Dunwoody Road, Atlanta, Georgia 30346–1521 Telephone: (770) 395–7700

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Centers for Agricultural Safety and Health", PAR 15–353.

Contact Person for More Information: Donald Blackman, Ph.D., Scientific Review Officer, CDC/NIOSH, 2400 Century Center Parkway NE., 4th Floor, Room 4204, Mailstop E–74, Atlanta, Georgia 30345, Telephone: (404) 498–6185, *DYB7@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–08518 Filed 4–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-16–16ZX; Docket No. CDC–2016–0037]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the Environmental Public Health Tracking Network, an information system which collects data from (1) other CDC programs such as the National Center for Health Statistics, (2) other federal agencies such as the Environmental Protection Agency, (3) publically accessible systems such as the Census Bureau, and (4) funded and unfunded state and local health departments (SLHD).

DATES: Written comments must be received on or before June 13, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0037 by any of the following methods:

- *Federal eRulemaking Portal:* Regulation.gov. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Environmental Public Health Tracking Network (Tracking Network)—Existing Collection in Use without an OMB Control Number—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In September, 2000, the Pew Environmental Health Commission issued a report entitled "America's Environmental Health Gap: Why the Country Needs a Nationwide Health Tracking Network." In this report, the Commission documented that the existing environmental health systems were inadequate and fragmented and recommended a "Nationwide Health Tracking Network for disease and exposures." In response to the report, Congress appropriated funds in the fiscal year 2002's budget for the CDC to establish the National Environmental Public Health Tracking Network (Tracking Network).

Continuously since 2008, and at the national level, the program collects data from (1) other CDC programs such as the National Center for Health Statistics, (2) other federal agencies such as the Environmental Protection Agency, (3) publically accessible systems such as the Census Bureau, and (4) funded and unfunded state and local health departments (SLHD). These data are integrated into and disseminated from the Tracking Network and used for analyses which can inform national programs, interventions, or policies; guide further development and activities within the Tracking Program; or advance the practice and science of environmental public health tracking. The Tracking Program also collects information from funded SLHD to monitor their progress related to their funding and for program evaluation. This information collection request is focused on data and information gathered by the Tracking Program from SLHD.

Due to voluntary program efforts to continuously improve compliance, the CDC recently determined that the Paperwork Reduction Act (PRA) should apply to the Tracking Network collections. Thus, the CDC requests a three-year PRA clearance to collect these data.

One part of the collection involves health, exposure, and hazard data from SLHD. The Tracking Network provides the United States with accurate and timely standardized data from existing health, exposure, and hazard surveillance systems and supports ongoing efforts within the public health and environmental sectors. The goal of the Tracking Network is to improve health tracking, exposure and hazard monitoring, and response capacity. When such data are available, the Tracking Program obtains data from national or public sources in order to reduce the burden on SLHD. When data are not available nationally or publically, the Tracking Program relies on funded SLHD to obtain and submit these data to the Tracking Network. Data from unfunded SLHD are accepted but not requested or solicited.

Data submitted annually by SLHD to the Tracking Program include: (1) Birth defects prevalence,(2) childhood lead blood levels, if a SLHD does not already report such data to CDC, (3) community drinking water monitoring, (4) emergency department visits, (5) hospitalizations, and (6) radon testing. The Tracking Program receives childhood lead blood levels data from CDC's Childhood Lead Poisoning Prevention Program (under the Healthy Homes and Lead Poisoning Surveillance System [HHLPSS—OMB Control No. 0920–0931, expiration date 5/31/2018]). A metadata record, a file describing the original source and collection procedures for the data being submitted, is also submitted with each dataset (1 per dataset for a total of 6 metadata records per year) using the Tracking Program's metadata creation tool.

Standardized extraction, formatting, and submission processes are developed in collaboration between CDC and SLHD for each dataset. Additions or modifications to these standardized datasets will also be developed collaboratively in order to improve the accuracy, completeness, efficiency, or utility of data submitted to CDC. Such changes will occur at most once a year. Examples of changes to data processes may include: (1) Addition of new variables or outcomes, (2) updates to case definitions, (3) modifications to temporal or spatial aggregation, and (4) changes in formatting for submission. As required, the Tracking Network will submit future additions and modifications as non-substantive change requests or revision information collection requests.

The other part of the collection involves program monitoring information from funded SLHD. In addition to standard reporting required by CDC's Procurement and Grants Office, the Tracking Program also collects information from funded SLHD for the purposes of program evaluation and monitoring. This information includes performance measures collected quarterly, a communications plan collected annually, an earned values management report collected quarterly, an evaluation plan collected annually, and Web site analytics collected quarterly as documents emailed to the Tracking Program.

There are no costs for the respondents other than their time. The total estimated time burden is 25,320 hours. This estimate includes the time it takes to extract the data from the original data source(s), standardize and format the data to match the corresponding Tracking Network data form, and submit the data to the Tracking Network. In some cases, the data at the source are centralized and easily extracted. In other cases, like for radon data, the data are not. In those cases, the number of hours for extracting and standardizing the data is much greater. Four respondents have been added to the 26 SLHDs the program currently funds to account for the data voluntarily received from unfunded SLHDs and to allow for potential program growth over the next three years.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
State and local health department.	Birth defects prevalence	22	1	80	1,760
	Childhood lead blood levels	18	1	80	1,440
	Community drinking water monitoring	30	1	120	3,600
	Emergency department visits	26	1	80	2,080
	Hospitalizations	30	1	80	2,400
	Radon testing	16	1	120	1,920
	Metadata records	30	6	20	3,600
	Program Management Tool (new awardees)	26	4	20	2,080
	Public Health Action Report (existing awardees)	4	4	20	320
	Communications plan	30	1	20	600
	Earned value management report	30	4	40	4,800
	Evaluation and performance measurement strategy report.	30	1	20	600
	Website analytics	30	4	1	120
Total					25,320

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–08442 Filed 4–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health (MSHRAC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 9:00 a.m.–5:30 p.m., EDT, May 10, 2016.

Place: Hilton Garden Inn Pittsburgh/Southpointe, 1000 Corporate Drive, Canonsburg, PA 15317, Telephone: (724) 743–5000, Fax: (724) 743–5010. Teleconference access is also available. If you wish to attend by phone, please contact Marie Chovanec by email at *MChovanec@cdc.gov* or by phone at 412–386–5302 at least 3 days in advance.

Status: Open to public, limited only by the space available. The meeting room accommodates approximately 45 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research. (30 U.S.C. 812(b)(2), Section 102(b)(2)).

Matters for Discussion: The meeting will focus on mining safety and health research projects and outcomes, including dynamic ground failure, the internet of things, ergo app, diesel nanotechnology, updates on the rock dust and refuge alternatives partnerships, an update on the capacity building program, an update on the National Occupational Research Agenda—Assessing BNI, and a discussion on the mining program research portfolio. The meeting will also include updates from the National Personal Protective Technology Laboratory and the Respiratory Health Division.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jeffrey H. Welsh, Designated Federal Officer, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, telephone 412–386–4040, fax 412–386–6614.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2016–08519 Filed 4–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through April 1, 2018.

For information contact: Amanda Cohn M.D., Designated Federal Officer, Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE., Mailstop A27, Atlanta, Georgia 30329–4027, telephone (404) 639–6039 or fax (404) 315–4679.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–08516 Filed 4–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement, RFA–CE–16–001: Research Grants for Preventing Violence and Violence Related Injury (R01).

Time and Date: 8:30 a.m.–6:00 p.m., EDT, May 4–5, 2016 (CLOSED).

Place: Atlanta Marriott Century Center, 2000 Century Blvd. NE., Atlanta, GA 30345.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Research Grants for Preventing Violence and Violence Related Injury (R01)", FOA Number RFA–CE–16–001.

Contact Person for More Information: Jane Suen, Dr.P.H., M.S., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F–63, Atlanta, Georgia 30341, Telephone (770) 488–4281, *JXS8@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–08514 Filed 4–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee.

Times and Dates: 11:00 a.m.–5:30 p.m., EDT, May 19, 2016; 8:30 a.m.–1:00 p.m., EDT, May 20, 2016.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-U.S. citizens, pre-approval is required (please contact Gwen Mustaf, 301–458–4500, *glm4@cdc.gov,* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulation, Subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters for Discussion: The agenda will include:

1. Welcome remarks by the Director, NCHS
2. Presentation on ICD–10
3. Presentation on Health Interview Survey Content Redesign
4. Update on Office of Analysis and Epidemiology
5. Presentation on Web Survey

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by May 4, 2016.

The agenda items are subject to change as priorities dictate.

Contact Person for More Information: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4024.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–08520 Filed 4–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Fund (CCDF) Tribal Reporting Requirements—ACF–700.

OMB No.: 0970–0430.

Description: Thee Child Care and Development Fund (CCDF) Tribal Annual Report (ACF–700) requests annual Tribal aggregate information on services provided through the CCDF, which is required by CCDF regulations (45 CFR parts 98 and 99). Tribal Lead Agencies (TLAs) are required to submit annual aggregate data appropriate to Tribal programs on children and families receiving CCDF-funded child care services. The revised ACF–700 report consists of two parts: (1) Administrative Data, and (2) Tribal Narrative. The content and format of the narrative section have been revised to make the form easier to complete, with new check box formatting. These proposed revisions will allow the Office of Child Care (OCC) to more easily generate and quantify data in the report. These changes will help us better understand Tribal activities as they relate to compliance, quality of child care, use of funds, and technical assistance needs. Information from the ACF–700 will be included in the Secretary's Report to Congress, as appropriate, and will be shared with all TLAs to inform them of CCDF-funded activities in other Tribal programs.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–700 Report	260	1	38	9,880

Estimated Total Annual Burden Hours: 9,880.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–08481 Filed 4–12–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.569]

Announcing the Award of a Single Source Expansion Supplement to Community Action Partnership in Washington, DC

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Notice of award of a single-source expansion supplement to Community Action Partnership in Washington, DC, to create a new learning cluster focused on child poverty in rural communities and expanding access to multi-generational programs.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), Division of State Assistance announces a single-source program expansion supplement in the amount of $50,000 to Community Action Partnership in Washington, DC 20036. The supplement will support the creation of a new learning cluster focused on addressing child poverty in rural communities and tribal lands and increasing access to multi-generational programs. This effort supports a recent Administration initiative, *Rural Impact. Rural Impact* is a new effort, overseen by the White House Rural Council, to bring together federal agencies and public and private partners to support a multi-generational approach to investing in rural families, communities, and tribal places.

DATES: The period of support is May 15, 2015–September 29, 2015.

FOR FURTHER INFORMATION CONTACT: Seth Hassett, Division Director, Office of Community Services, 330 C Street SW., Washington, DC 20201. Telephone: 202–401–2333; Email: *seth.hassett@acf.hhs.gov*

SUPPLEMENTARY INFORMATION: The White House Rural Council recently launched Rural Impact, a new effort to bring together federal agencies and public and private partners to support a multi-generational approach to investing in rural families and communities. HHS is a member of the federal interagency team that supports this effort. Within HHS, the Administration for Children and Families, including the Office of Community Services, has a significant reach into rural America funding a wide range of services and projects that help rural families and communities.

Statutory Authority: This program is authorized by Sections 674(b)(2)(A) and 678A of the CSBG Act, as amended (42 U.S.C. 9903(b)(2)(A) and 9913).

Christopher Beach,

Senior Grants Policy Specialist, Office of Administration.

[FR Doc. 2016–08506 Filed 4–12–16; 8:45 am]

BILLING CODE 4184–27–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration

(FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 24, 2016, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's phone number is 301–977–8900.

Contact Person: Evella Washington, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, *Evella.Washington@fda.hhs.gov,* 301–796–6683, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On May 24, 2016, the committee will discuss, make recommendations and vote on information related to the premarket approval application regarding St. Jude Medical's AMPLATZER Patent Foramen Ovale (PFO) Occluder. The AMPLATZER PFO Occluder is a percutaneously delivered permanent cardiac implant for PFO closure. The device is indicated for preventing recurrent ischemic stroke in patients who have had a cryptogenic stroke due to a presumed paradoxical embolism.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 10, 2016. Oral presentations from the public will be scheduled on May 24, 2016 between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 28, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 2, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact AnnMarie Williams, *AnnMarie.Williams@fda.hhs.gov,* 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 8, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–08530 Filed 4–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the Presidential Commission for the Study of Bioethical Issues

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Presidential Commission for the Study of Bioethical Issues, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues (the Commission) will conduct its twenty fifth meeting on May 3, 2016. At this meeting, the Commission will reflect on the past, present, and future impact of national bioethics advisory bodies. Topics will include the history of national bioethics advisory bodies and their contributions to health policy, perspectives about similar bodies elsewhere, and discussion about what the future holds for groups like the Commission.

DATES: The meeting will take place May 3, 2016, from 9 a.m. to approximately 5 p.m.

ADDRESSES: Grand Hyatt Washington Hotel, 1000 H St. NW., Washington, DC 20001

FOR FURTHER INFORMATION CONTACT: Lisa M. Lee, Executive Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Telephone: 202–233–3960. Email: *Lisa.Lee@bioethics.gov.* Additional information may be obtained at *www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the twenty fifth meeting of the Commission. The meeting will be open to the public with attendance limited to space available. The meeting will also be webcast at *www.bioethics.gov.*

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an expert panel of not more than 13 members who are drawn from the fields of bioethics, science, medicine, technology, engineering, law, philosophy, theology, or other areas of the humanities or social sciences. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda for the Commission's twenty fifth meeting is to reflect upon the role of national bioethics advisory bodies, both in the US and abroad, in the past, present, and future. The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful consideration of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted in advance, during, and after the meeting and are especially welcome. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Written comments will be accepted by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection. Time permitting, we will read aloud as many comments as possible.

Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at *Esther.Yoo@bioethics.gov* at least one week in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Dated: March 28, 2016.

Lisa M. Lee,

Executive Director, Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2016–08504 Filed 4–12–16; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cellular Aspects of Spinal Cord Injury, Epilepsy, and other Neurological Disorders and Diseases.

Date: April 20, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Calcium Channels and Retinal Mechanisms.

Date: April 22, 2016.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 6, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08433 Filed 4–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Loan Repayment Program.

Date: April 18, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; AIED Clinical Trial Review.

Date: April 27, 2016.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; VSL Clinical Trial Review.

Date: May 2, 2016.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Center Grant (P50) Review.

Date: May 18, 2016.

Time: 11:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 8, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08524 Filed 4–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism; Early Review of Grant Applications.

Date: April 20, 2016.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse & Alcoholism, 5635 Fishers Lane, Room 3002, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: April 7, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08436 Filed 4–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 16, 2016.

Open: 8:30 a.m. to 1:00 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: National Institutes of Health, Terrace Level Conference Rooms, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Terrace Level Conference Rooms, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Anne E Schaffner, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 7, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08435 Filed 4–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, Office of Science Policy, Office of Biotechnology Activities; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the meeting of the

National Science Advisory Board for Biosecurity (NSABB).

Name of Committee: National Science Advisory Board for Biosecurity.

Date: May 24, 2016.

Time: 8:30 a.m.–4:00 p.m. Eastern.

Agenda: (1) Finalization of NSABB findings and recommendations on a conceptual approach to evaluating proposed gain-of-function (GOF) studies; (2) discussion of next steps for U.S. government policy development regarding GOF studies; and (3) other business of the Board.

Place: National Institutes of Health, Wilson Hall, 3rd Floor, Bldg. 1, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christopher Viggiani, Ph.D., Executive Director, NSABB, NIH Office of Science Policy, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, (301) 496–9838, *viggianic@od.nih.gov.*

Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the National Science Advisory Board for Biosecurity (NSABB) to provide advice regarding federal oversight of dual use research—defined as legitimate biological research that generates information and technologies that could be misused to pose a biological threat to public health and/or national security. The NSABB is currently charged with providing formal recommendations to the United States Government on a conceptual approach for the evaluation of proposed gain-of-function studies.

The meeting will be open to the public and will also be webcast as space will be limited. Persons planning to attend or view via the webcast may pre-register online via the link provided below or by calling Palladian Partners, Inc. (Contact: Ida Donner or Carly Sullivan at 301–273–2817). Online and telephone registration will close at 12:00 p.m. Eastern on May 18, 2016. After that time, attendees may register onsite on the day of the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration on or prior to May 18.

Meeting materials: The meeting agenda and links to the online registration and webcast will be available at: *http://osp.od.nih.gov/office-biotechnology-activities/biosecurity/nsabb/nsabb-meetings-and-conferences.* NSABB findings and draft recommendations will be posted prior to the meeting. Please check this Web site for updates.

Public Comments: Time will be allotted on the agenda for the presentation of public comments. Members of the public interested in presenting prepared comments relevant to the mission of the NSABB should indicate so upon registration. Sign-up for delivering prepared oral comments will be limited to one per person or organization representative per open comment period. Individual presentations will be time-limited to facilitate broad participation from multiple speakers. Participants viewing the meeting by webcast may submit questions and comments during the meeting via email sent to *nsabb@od.nih.gov.* While time constraints and the volume of questions may not allow for all questions and comments submitted via email to be aired during the meeting, all relevant correspondence received will be relayed to the Board. Emailed correspondence should include the name, contact information, and when applicable, professional affiliation of the sender.

In addition, interested persons may file written comments at any time with the Board via an email sent to *nsabb@od.nih.gov* or by regular mail sent to the Contact Person listed on this notice. Written statements should include the name, contact information, and when applicable, the professional affiliation of the interested person. Written comments received by 10:00 a.m. Eastern on May 20, 2016, will be relayed to the Board prior to the NSABB meeting. Any written comments received after this deadline will be provided to the Board either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies.

Please Note: In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Please visit the NIH Visitor Security page for important security and campus access information.

Dated: April 6, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08437 Filed 4–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; "Precision Medicine Initiative Cohort Program Coordinating Center."

Date: May 5, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 6, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08432 Filed 4–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Collaborative Innovation Award Application (U01) Special Emphasis Panel.

Date: May 10–11, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton-Washington DC Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sailaja Koduri, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), 6701 Democracy Blvd., Room 1074, Bethesda, MD

20892, 301–435–0813, *Sailaja.koduri@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 6, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08434 Filed 4–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 18, 2016.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, C Wing 6th Floor, Conference Center, Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: 4:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor, Conference Center, Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7323, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: May 18, 2016.

Closed: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor, Conference Center, Room 10, 31 Center Drive, Bethesda, MD 20892.

Open: 2:00 p.m. to 4:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7323, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: May 18, 2016.

Open: 1:00 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, C Wing 6th Floor, Conference Center, Room 7, 31 Center Drive, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor, Conference Center, Room 7, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7323, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: May 18, 2016.

Open: 1:00 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, C Wing 6th Floor, Conference Center, Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor, Conference Center, Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7323, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 7, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08525 Filed 4–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0058]

Chemical Security Assessment Tool (CSAT)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-Day Notice and request for comments; Revision of Information Collection Request: 1670–0007.

SUMMARY: The Department of Homeland Security (DHS or the Department), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD), will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). The Department previously

published this ICR, in the **Federal Register** on November 18, 2015, for a 60-day public comment period.[1]

In this notice NPPD is: (1) Responding to two commenters who submitted comments in response to the 60-day notice previously published for this ICR and (2) inviting public comment concerning this ICR for an additional 30 days.

DATES: Comments are encouraged and will be accepted until May 13, 2016. This process is conducted in accordance with 5 CFR 1320.8.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be identified by the docket number DHS–2015–0058 and may be submitted using *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),[2] Sensitive Security Information (SSI),[3] or Protected Critical Infrastructure Information (PCII)[4] should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and packaged in accordance with applicable requirements and submitted by mail to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be identified by the docket number DHS–2015–0058.

The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Chemical Facility Anti-Terrorism Standards (CFATS) Program Manager, DHS/NPPD/IP/ISCD, *CFATS@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007, Public Law 109–295 (2006), provided the Department with the authority to regulate the security of high-risk chemical facilities. On April 9, 2007, the Department issued an Interim Final Rule (IFR), implementing this statutory mandate at 72 FR 17688. In December 2014, the President signed into law the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (the CFATS Act of 2014), Public Law 113–254, which authorized the Chemical Facility Anti-Terrorism Standards program in the Homeland Security Act of 2002, as amended, Public Law 107–296.[5]

The CFATS regulations (available at 6 CFR part 27) govern the security at covered chemical facilities that have been determined by the Department to be at high risk for terrorist attack. See 6 CFR part 27. The CFATS represent national-level effort to minimize the terrorism risk to such facilities. Its design and implementation balance maintaining economic vitality with securing facilities and their surrounding communities. The regulations were designed to take advantage of protective measures already in place and to allow facilities to employ a wide range of tailored measures to satisfy the regulations' Risk-Based Performance Standards (RBPS).

The Department collects the core regulatory data necessary to implement CFATS through the portions of the CSAT covered under this collection. For more information about CFATS and CSAT, you may access *www.dhs.gov/chemicalsecurity.* The current information collection for CSAT (IC 1670–0007) will expire on April 30, 2016.[6]

Responses To Comments Submitted During 60-Day Comment Period

The Department invited comments on four questions:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

In response to the 60-Day Notice that solicited comments about the CSAT ICR, the Department received 12 comments from 2 commenters. The 2 commenters were 1 private citizen and 1 industry association.

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[1] See 80 FR 72086. The 60-day **Federal Register** notice for Information Collection 1670–0007, which invited comments for 60 days, may be found at *https://www.federalregister.gov/articles/2015/11/18/2015-29457/chemical-security-assessment-tool-csat.*

[2] For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at *http://www.dhs.gov/xlibrary/assets/chemsec_cvi_proceduresmanual.pdf.*

[3] For more information about SSI see 49 CFR part 1520 and the SSI Program Web page at *http://www.tsa.gov.*

[4] For more information about PCII see 6 CFR part 29 and the PCII Program Web page at *http://www.dhs.gov/protected-critical-infrastructure-information-pcii-program.*

[5] Section 2 of the CFATS Act of 2014 adds a new Title XXI to the Homeland Security Act of 2002. Title XXI contains new secs. numbered 2101 through 2109. Citations to the Homeland Security Act of 2002 throughout this document reference those secs. of Title XXI. Those secs. have been codified in the U.S. Code at 6 U.S.C. 621–629.

[6] The current information collection for CSAT may be found at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201303-1670-001.*

Comments Related to Whether the Proposed Collection of Information is Necessary for the Proper Performance of the Function of the Agency, Including Whether the Information Will Have Practical Utility

The Department did not receive any comments suggesting that the proposed collection of information was not necessary for the proper performance of the functions of the agency.

Comments Related to the Accuracy of the Agency's Estimate of the Burden of the Proposed Collection of Information, Including the Validity of the Methodology and Assumptions Used

Comment: Private Citizen commented, "It is impossible for any individual or entity to make an adequate determination or estimation of the time and costs associated with the submission of the revised Top-Screen document. Although the revised document is available to DHS it has not been published and is not available to this commenter or other interested entity."

Response: The Department calculated the reduction in Top-Screen time and costs by measuring the time users were logged into the CSAT system completing a Top-Screen between Calendar Year 2012–2014. DHS expects that this level of time will remain the same with the new Top-Screen survey.

Comment: Private Citizen commented, "It is impossible for any individual or entity to make an adequate determination or estimation of the time and costs associated with the submission of the revised Security Vulnerability Assessment document. Although the revised document is available to DHS it has not been published and is not available to this commenter or other interested entity."

Response: The Department calculated the reduction in time and cost for the new Security Vulnerability Assessment (SVA) and Alternative Security Program (ASP) surveys submitted in lieu of the SVA by measuring the time users were logged into the CSAT system completing the previous SVA/ASP between Calendar Year 2012–2014, and subtracting time for the removal of duplicate questions from the current survey and removal of the attack scenarios from the current survey.

Comment: Private Citizen commented, "The Collection Request document also states the Department is considering requesting chemical facilities of interest that have chemical holdings at or above the non-screening threshold quantities on Appendix of the CFATS complete a Top Screen, even if the facility has previously completed a Top-Screen and been determined not to be high-risk. It is understood that a new baseline for all assets must be established however for entities with a large number of registered facilities with a minimal number of tiered facilities this will be a costly undertaking. Again as in 1 above, it is impossible for any individual or entity to make an adequate determination or estimation of the time and costs associated with the submission of the revised Top-Screen document. Although the revised document is available to DHS it has not been published and is not available to this commenter or other interested entity."

Response: The Department is only considering requesting facilities that have chemical holdings at or above screening threshold quantities on Appendix A to submit a new Top-Screen. The Department calculated this cost by taking the total number of unique facilities 36,930 that have submitted a Top-Screen since the inception of the regulation in 2007 and applying the time users were logged into the system completing a Top-Screen between Calendar Year 2012–2014.

Comment: Private Citizen commented, "The assumption that Site Security Officers are the only individuals responsible for submitting Top-Screens in many instances may not be a valid assumption. There are costs associated with other individuals that may be involved in the process and in other designated positions such as Submitters and Authorizers. In many instances the Site Security Officer position is not a dedicated separate position. These duties may be/are assigned as additional duties to facility supervisory, management, and operations positions as well as engineers. The cost curve for these individuals is much greater."

Response: The Department agrees that the actual cost to a facility may vary by the number of people involved, the type of people involved, and the unique facility business operations. Since 2007, the Department has published multiple ICRs and received a significant number of comments about the costs and burdens associated with how to best estimate the facility burden. Those commenters have consistently accepted the use of a Site Security Officer as a reasonable baseline to estimate the costs for most facilities. As a result, the Department has elected to retain this assumption.

Comments Related to the Quality, Utility, and Clarity of the Information To Be Collected

Comment: Industry Association commented, "Some of the questions are phrased as a double negative, making the question unnecessarily confusing. The questions should be phrased in such a way that the expected answer is abundantly evident. If the answer is a simple yes or no, indicate that in the question and provide a text box. If the question requires supporting information, indicate what types of supporting documentation would be acceptable and unacceptable."

Response: The Department has redesigned the CSAT tool suite. As part of this redesign, the Department changed the question wording where possible to make it clearer and easier to understand.

Comments Related to Minimizing the Burden of the Collection of the Information on Those Who Are To Respond, Including Through the Use of Appropriate Automated, Electronic Mechanical, or Other Technological Collection Techniques or Other Forms of Information Technology, e.g., Permitting Electronic Submissions of Responses

Comment: Industry Association commented, "The CSAT tool has repetitive questions throughout the document that extend the time to complete. For example, Risk-Based Performance Standard (RBPS) 4, repeats questions from RBPS 1, 2 and 3. If the questions must be asked multiple times, it would be helpful to identify questions that would elicit a similar response."

Response: The Department has redesigned the CSAT tool suite. As part of this redesign, the Department removed repetitive questions.

Comment: Industry Association commented, "DHS should consider the format of RBPS 18. RBPS 18 stipulates that every answer to every question must be yes. Instead of filling out a form by checking a series of boxes, those requirements could be explicitly stated with a simple signature or check box at the bottom."

Response: The Department has taken this recommendation and merged the retention of records questions that must be answered with a yes into one question that is an affirmation statement.

Other Comments Submitted in Response to the Information Collection Request

Comment: Industry Association commented, "DHS should consider removing the chlorine rail car as a theft issue in the tiering process. Chlorine rail cars weigh between 83,000 and 93,000 lbs. when empty. Loaded rail cars weigh in excess of 263,000 lbs. Due to the extreme weight and the necessity to transport them on permanent rails using powerful mechanized systems, chlorine rail cars should not be considered man-portable."

Response: The Department has developed an improved risk methodology. As part of this improved risk methodology, the Department will consider packaging size and type in the new vulnerability factor. Although loaded rail cars, which are considered bulk transportation items, are extremely heavy and bulky, the potential for the theft of these rail cars cannot be ruled out.

Comment: Industry Association commented, "Additionally, CI [Chlorine Institute] members have received feedback on Top Screens regarding the release volume. For EPA's RMP submissions, the single largest container is used as the release scenario. When this volume was submitted on a Top Screen, CI members were asked to instead use the full inventory of the COI [Chemical of Interest] within a 170 foot radius. Especially for members who package chlorine into multiple smaller containers, such as cylinders and ton containers, this scenario is highly impractical and improbable and has the potential to affect tier determination. It is also unclear the origins of the 170-foot radius specification."

Response: The CFATS program is a security-based regulation that is focused on mitigating the risk of intentional acts which generate high consequences. It is possible that these acts may involve multiple cylinders, containers, etc. In contrast, the EPA Risk Management Program is a safety-based regulation that is focused on accidental releases. Thus, it is appropriate for the DHS modeling to take into account the possibility and consequences of an intentional act that results in the release of multiple cylinders/containers.

Comment: Industry Association commented, "Since 2013, CI has had a Cooperative Research and Development Agreement (CRADA) with Chemical Security Analysis Center (CSAC) within DHS. With the support of the Chlorine Institute, CSAC has conducted a series of field experiments to study the dispersion patterns and the nature of reactivity of chlorine to its surroundings. From these tests, CSAC then modeled chlorine releases and contributed those results to the newly updated Chlorine Institute Pamphlet 74, Guidance on Estimating the Area Affected By A Chlorine Release. These models are based on real-world, large-scale chlorine releases, modeled by DHS scientists. For this reason, some members have elected to use the release estimates of Pamphlet 74 in lieu of RMP*COMP, and have received notification from DHS that RMP*COMP must be used. The RMP*COMP is based on a computational model, not real-world tests studied by DHS scientists. DHS should consider, for chlorine, allowing the use of Pamphlet 74 dispersion estimates in lieu of RMP*COMP due to the higher level of accuracy and to conserve resources by using already existing dispersion analysis."

Response: The Department has developed an improved risk methodology. As part of this improved risk methodology, DHS will employ an atmospheric dispersion model, thus eliminating the need for facilities to use the EPA RMP*Comp Tool.

Comment: Industry Association commented, "DHS should develop a Compliance Guide for performing audits at each Tier Level. This will assist regulated communities in preparing for audits and achieving the intended objectives of CFATS. Additionally, some CI members have observed that some DHS auditors completely ignore CSAT questions during an audit; a Compliance Guide could standardize the auditing process."

Response: The Department will consider developing a Compliance Guide for performing audits, at each Tier Level.

Comment: Industry Association commented, "DHS should consider combining the Top Screen and Security Vulnerability Assessment processes. Combining the processes would save time for both the regulated community and DHS as each process has similar goals. DHS should also consider factors/measures/conditions that if existing or present would effectively lower the risk ranking of the security issue and effectively lower the Tier Level. This may reduce the number of facilities that are reassigned to a different tier later in the process."

Response: The Department has redesigned the CSAT tool suite. As part of this redesign, the Department has moved the questions relevant to tiering determinations from the Security Vulnerability Assessment survey to the Top-Screen survey. Along with the redesign of the CSAT tool suite DHS has also developed an improved risk methodology. In this improved risk methodology, DHS has included a new vulnerability metric, based on inherent facility characteristics that reduce vulnerability.

The Department's Methodology in Estimating the Burden for the Top-Screen

This 30-Day Notice relies on the analysis and resulting burden estimates in the 60-day notice for this instrument. The Department also understands CVI training may be required for some Site Security Officer's before being able to submit a Top-Screen. The burden for CVI training is accounted for in ICR: 1670- 30-Day Notice published, in the **Federal Register**, on March 18, 2013.[7]

The Department's Methodology in Estimating the Burden for the Security Vulnerability Assessment (SVA) & Alternative Security Program (ASP) Submitted in Lieu of the Security Vulnerability Assessment

This 30-Day notice relies on the analysis and resulting burden estimates in the 60-day notice for this instrument.

The Department's Methodology in Estimating the Burden for Site Security Plan (SSP) & Alternative Security Program (ASP) Submitted in Lieu of the Site Security Plan

This 30-Day Notice relies on the analysis and resulting burden estimates in the 60-day notice for this instrument.

The Department's Methodology in Estimating the Burden for the Helpdesk

This 30-Day Notice relies on the analysis and resulting burden estimates in the 60-day notice for this instrument.

The Department's Methodology in Estimating the Burden for Identification of Additional Facilities and Assets at Risk

This 30-Day Notice relies on the analysis and resulting burden estimates in the 60-day notice for this instrument.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: Chemical Security Assessment Tool.

OMB Number: 1670–0007.

Instrument: CSAT Top-Screen.

Frequency: "On occasion" and "Other."

Affected Public: Business or other for-profit.

Number of Respondents: 1,000 respondents (estimate).

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[7] The CVI 30-Day Notice published on March 18, 2013 *https://www.federalregister.gov/articles/2013/03/18/2013-06096/chemical-facility-anti-terrorism-standards-cfats-chemical-terrorism-vulnerability-information-cvi.*

Estimated Time per Respondent: 6.00 hours.
Total Burden Hours: 9,200 hours.
Total Burden Cost (capital/startup): $15,005,400.
Total Recordkeeping Burden: $0.
Total Burden Cost: $15,623,400.

Instrument: Security Vulnerability Assessment and Alternative Security Program Submitted in Lieu of the Security Vulnerability Assessment.
Frequency: "On occasion" and "Other."
Affected Public: Business or other for-profit.
Number of Respondents: 211 respondents.
Estimated Time per Respondent: 2.65 hours.
Total Burden Hours: 900 hours.
Total Burden Cost (capital/startup): $0.
Total Recordkeeping Burden: $0.
Total Burden Cost: $58,600.

Instrument: Site Security Plan and Alternative Security Program Submitted in Lieu of the Site Security Plan.
Frequency: "On occasion" and "Other."
Affected Public: Business or other for-profit.
Number of Respondents: 211 respondents.
Estimated Time per Respondent: 18.75 hours.
Total Burden Hours: 8,000 hours.
Total Burden Cost (capital/startup): $0.
Total Recordkeeping Burden: $438,800.
Total Burden Cost: $976,400.

Instrument: CFATS Helpdesk.
Frequency: "On occasion" and "Other."
Affected Public: Business or other for-profit.
Number of Respondents: 15,000 respondents.
Estimated Time per Respondent: 0.17 hours.
Total Burden Hours: 2,550 annual burden hours.
Total Burden Cost (capital/startup): $0.
Total Recordkeeping Burden: $0.
Total Burden Cost: $172,700.

Instrument: CSAT User Registration.
Frequency: "On occasion" and "Other."
Affected Public: Business or other for-profit.
Number of Respondents: 1000 respondents.
Estimated Time per Respondent: 2 hours.
Total Burden Hours: 2,000 hours.
Total Burden Cost (capital/startup): $283,600.
Total Recordkeeping Burden: $0.
Total Burden Cost: $419,000.

Instrument: Identification of Facilities and Assets At Risk.
Frequency: "On occasion" and "Other."
Affected Public: Business or other for-profit.
Number of Respondents: 211 respondents.
Estimated Time per Respondent: 0.17 hours.
Total Burden Hours: 40 hours.
Total Burden Cost (capital/startup): $34,600.
Total Recordkeeping Burden: $0.
Total Burden Cost: $37,000.

Dated: April 7, 2016.

Scott Libby,

Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2016–08495 Filed 4–12–16; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of Determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Attorney General and the Secretary of State, I have determined that the grounds of inadmissibility at sec. 212(a)(3)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(3)(B), bar certain aliens who do not pose a national security or public safety risk from admission to the United States and from obtaining immigration benefits or other status. Accordingly, consistent with prior exercises of the exemption authority, and in consultation with the Attorney General and the Secretary of State, I hereby conclude, as a matter of discretion in accordance with the authority granted by sec. 212(d)(3)(B)(i) of the INA, 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that sec. 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), excluding subclause (i)(II), shall not apply with respect to an alien for any activity or association relating to the following groups:

- All Burma Muslim Union
- Arakan Army
- Hongsawatoi Restoration Army/Party
- Kachin Independence Army
- Kachin Independence Organization
- Karen National Defense Organization
- Karenni Nationalities People's Liberation Front
- Kawthoolei Muslim Liberation Front
- Kuki National Army
- Mon National Liberation Army
- Mon National Warrior Army
- Myeik-Dawei United Front
- National Democratic Front
- National United Party of Arakan
- New Democratic Army Kachin
- New Mon State Party
- Parliamentary Democracy Party
- People's Democratic Front
- Ramanya Restoration Army
- Shan State Army
- Zomi Reunification Organization/Zomi Revolutionary Army provided that the alien satisfies the relevant agency authority that the alien:

(a) is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) has undergone and passed all relevant background and security checks;

(c) has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of activities or association falling within the scope of sec. 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;

(e) poses no danger to the safety and security of the United States; and

(f) warrants an exemption from the relevant inadmissibility provision(s) in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time, with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the

United States or its agencies or officers or any other person.

In accordance with sec. 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2016–08494 Filed 4–12–16; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2016–N070; FXES11130300000–167–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered or threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before May 13, 2016.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Carlita Payne, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR part 17. Submit your written data, comments, or request for a copy of the complete application to the mailing address or email address shown in **ADDRESSES.**

Permit Applications

Permit Application Number: TE206781

Applicant: Ecological Specialists, Inc., O'Fallon, MO

The applicant requests a permit renewal, with amendment to take (capture and release, capture and relocate) federally listed mussels throughout the States of Arkansas, Iowa, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Pennsylvania, Oklahoma, Ohio, South Dakota, Tennessee, Virginia, Wisconsin, and West Virginia. The following mussel species are included:

Pocketbook, Ouachita rock	*Arkansia wheeleri.*
Bean, rayed	*Villosa fabalis.*
Catspaw, white (pearlymussel)	*Epioblasma obliquata perobliqua.*
Higgins eye (pearlymussel)	*Lampsilis higginsii.*
Mapleleaf, winged	*Quadrula fragosa.*
Mussel, scaleshell	*Leptodea leptodon.*
Mussel, sheepnose	*Plethobasus cyphyus.*
Mussel, snuffbox	*Epioblasma triquetra.*
Pearlymussel, Curtis	*Epioblasma florentina curtisii.*
Pearlymussel, purple cat's paw	*Epioblasma obliquata obliquata.*
Spectaclecase (mussel)	*Cumberlandia monodonta.*
Acornshell, southern	*Epioblasma othcaloogensis.*
Bean, Cumberland (pearlymussel)	*Villosa trabalis.*
Blossom, green (pearlymussel)	*Epioblasma torulosa gubernaculum.*
Blossom, tubercled (pearlymussel)	*Epioblasma torulosa torulosa.*
Blossom, turgid (pearlymussel)	*Epioblasma turgidula.*
Blossom, yellow (pearlymussel)	*Epioblasma florentina florentina.*
Combshell, Cumberlandian	*Epioblasma brevidens.*
Combshell, upland	*Epioblasma metastriata.*
Elktoe, Appalachian	*Alasmidonta raveneliana.*
Elktoe, Cumberland	*Alasmidonta atropurpurea.*
Fanshell	*Cyprogenia stegaria.*
Fatmucket, Arkansas	*Lampsilis powellii.*
Kidneyshell, triangular	*Ptychobranchus greenii.*
Lampmussel, Alabama	*Lampsilis virescens.*
Lilliput, pale (pearlymussel)	*Toxolasma cylindrellus.*
Moccasinshell, Coosa	*Medionidus parvulus.*
Monkeyface, Cumberland (pearlymussel)	*Quadrula intermedia.*
Mucket, pink (pearlymussel)	*Lampsilis abrupta.*
Mussel, oyster	*Epioblasma capsaeformis.*
Pearlymussel, birdwing	*Lemiox rimosus.*
Pearlymussel, cracking	*Hemistena lata.*
Pearlymussel, dromedary	*Dromus dromas.*
Pearlymussel, littlewing	*Pegias fabula.*
Pigtoe, Cumberland	*Pleurobema gibberum.*

Pigtoe, finerayed	*Fusconaia cuneolus.*
Pigtoe, Georgia	*Pleurobema hanleyianum.*
Pigtoe, rough	*Pleurobema plenum.*
Pigtoe, shiny	*Fusconaia cor.*
Pigtoe, southern	*Pleurobema georgianum.*
Pimpleback, orangefoot (pearlymussel)	*Plethobasus cooperianus.*
Pocketbook, fat	*Potamilus capax.*
Pocketbook, fine-lined	*Lampsilis altilis.*
Pocketbook, speckled	*Lampsilis streckeri.*
Riffleshell, tan	*Epioblasma florentina walkeri (=E. walkeri).*
Ring pink (mussel)	*Obovaria retusa.*
Wartyback, white (pearlymussel)	*Plethobasus cicatricosus.*
Bean, purple	*Villosa perpurpurea.*
Clubshell	*Pleurobema clava.*
Monkeyface, Appalachian (pearlymussel)	*Quadrula sparsa.*
Rabbitsfoot, rough	*Quadrula cylindrica strigillata.*
Riffleshell, northern	*Epioblasma torulosa rangiana.*
Spinymussel, James	*Pleurobema collina.*
Wedgemussel, dwarf	*Alasmidonta heterodon.*
Kidneyshell, fluted	*Ptychobranchus subtentum.*
Mucket, Neosho	*Lampsilis rafinesqueana.*
Pearlymussel, slabside	*Pleuronaia dolabelloides.*
Rabbitsfoot	*Quadrula cylindrica cylindrica.*

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE182436

Applicant: Illinois Natural History Survey, Champaign, IL

The applicant requests a permit renewal, with amendment to take (capture and release) Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*) and take (conduct hibernacula surveys) gray bat (*Myotis grisescens*) throughout Illinois. Proposed activities are for the documentation of species presence and habitat use, population monitoring, and evaluation of impacts to enhance recovery and survival of the species in the wild.

Permit Application Number: TE71041B

Applicant: Iwona Kuczynska, Richmond Heights, MO

The applicant requests a permit amendment to take (capture and release) American burying beetle (*Nicrophorus americanus*) in the States of Arkansas, Kansas, Missouri, Nebraska, Oklahoma, South Dakota, and Texas. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE38821A

Applicant: Stantec Consulting Services. Louisville, KY

The applicant requests a permit renewal, with amendment to take (capture and release) Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*),, Virginia big-eared bat (*Corynorhinus townsendii virginianus*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), copperbelly watersnake (*Nerodia erythrogaster neglecta*), and federally listed mussels and fish in the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. The following mussel and fish species are included:

Bean, rayed	*Villosa fabalis.*
Higgins eye (pearlymussel)	*Lampsilis higginsii.*
Mussel, sheepnose	*Plethobasus cyphyus.*
Mussel, snuffbox	*Epioblasma triquetra.*
Purple cat's paw pearlymussel	*Epioblasma obliquata obliquata.*
Spectaclecase (mussel)	*Cumberlandia monodonta.*
Bean, Cumberland (pearlymussel)	*Villosa trabalis.*
Combshell, Cumberlandian	*Epioblasma brevidens.*
Fanshell	*Cyprogenia stegaria.*
Mucket, pink (pearlymussel)	*Lampsilis abrupta.*
Mussel, oyster	*Epioblasma capsaeformis.*
Pearlymussel, birdwing	*Lemiox rimosus.*
Pearlymussel, cracking	*Hemistena lata.*
Pearlymussel, dromedary	*Dromus dromas.*
Pearlymussel, littlewing	*Pegias fabula.*
Pigtoe, finerayed	*Fusconaia cuneolus.*
Pigtoe, rough	*Pleurobema plenum.*
Pigtoe, shiny	*Fusconaia cor.*
Pimpleback, orangefoot (pearlymussel)	*Plethobasus cooperianus.*
Pocketbook, fat	*Potamilus capax.*
Riffleshell, tan	*Epioblasma florentina walkeri (=E. walkeri).*
Ring pink (mussel)	*Obovaria retusa.*
Wartyback, white (pearlymussel)	*Plethobasus cicatricosus.*
Bean, purple	*Villosa perpurpurea.*
Clubshell	*Pleurobema clava.*
Rabbitsfoot, rough	*Quadrula cylindrica strigillata.*

Riffleshell, northern	*Epioblasma torulosa rangiana.*
Kidneyshell, fluted	*Ptychobranchus subtentum.*
Pearlymussel, slabside	*Pleuronaia dolabelloides.*
Rabbitsfoot	*Quadrula cylindrica cylindrica.*
Dace, blackside	*Phoxinus cumberlandensis.*
Darter, duskytail	*Etheostoma percnurum.*
Darter, Kentucky arrow	*Etheostoma spilotum.*
Darter, relict	*Etheostoma chienense.*
Shiner, palezone	*Notropis albizonatus.*
Sturgeon, pallid	*Scaphirhynchus albus.*

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE85229B

Applicant: Jeffrey Stone, Greenville, IL

The applicant requests a permit to take (capture and release) American burying beetle (*Nicrophorus americanus*) in the States of Arkansas, Kansas, Missouri, Nebraska, Oklahoma, South Dakota, and Texas. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE24334B

Applicant: Shaylyn Hatch, Covington, PA

The applicant requests a permit renewal, with amendment to take (capture and release, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), and northern long-eared bat (*Myotis septentrionalis*) in the States of Arkansas, Illinois, Indiana, Kentucky, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE135297

Applicant: Saint Louis Zoo, St. Louis, MO

The applicant requests a permit renewal to take (capture and release, capture and hold) American burying beetle (*Nicrophorus americanus*) at the Zoo facility in St. Louis, MO, and in the States of Arkansas and Missouri. Proposed activities are for the propagation and enhancement of survival of the species in the wild.

Permit Application Number: TE02378A

Applicant: U.S. Army Corps of Engineers, St. Paul District, St. Paul, MN

The applicant requests a permit renewal to take (capture and release) Higgins eye (pearlymussel) (*Lampsilis higginsii*), scaleshell mussel (*Leptodea leptodon*), snuffbox mussel (*Epioblasma triquetra*), sheepnose mussel (*Plethobasus cyphyus*), spectaclecase (mussel) (*Cumberlandia monodonta*), and winged mapleleaf (*Quadrula fragosa*) in the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE03450B

Applicant: Erin Basiger, Cloverdale, IN

The applicant requests a permit renewal, with amendment to take (capture and release) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), and northern long-eared bat (*Myotis septentrionalis*) in the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE89557A

Applicant: TRC Companies, Inc., Cleveland, OH

The applicant requests a permit renewal, with amendment to take (capture and release) Higgins eye (pearlymussel) (*Lampsilis higginsii*), pink mucket (pearlymussel) (*Lampsilis abrupta*), speckeled pocketbook (*Lampsilis streckeri*), Neosho mucket (*Lampsilis rafinesqueana*), scaleshell mussel (*Leptodea leptodon*), snuffbox mussel (*Epioblasma triquetra*), northern riffleshell (*Epioblasma torulosa rangiana*), purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), white catspaw (pearlymussel) (*Epioblasma obliquata perobliqua*), sheepnose mussel (*Plethobasus cyphyus*), orangefoot pimpleback (pearlymussel) (*Plethobasus cooperianus*), spectaclecase (mussel) (*Cumberlandia monodonta*), clubshell (*Pleurobema clava*), fanshell (*Cyprogenia stegaria*), fat pocketbook (*Potamilus capax*), rabbitsfoot (*Quadrula cylindrica cylindrica*), and rayed bean (*Villosa fabalis*) in the States of Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Ohio, Oklahoma, Tennessee, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE06873B

Applicant: Andrew Carson, Cincinnati, OH

The applicant requests a permit renewal, with amendment to take (capture and release) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*) in the District of Columbia and in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE07358A

Applicant: Ryan Slack, Indianapolis, IN

The applicant requests a permit amendment to take (capture and release, trap, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*) in the District of Columbia and in the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE85232B

Applicant: Zachary Kaiser, Ethridge, MT

The applicant requests a permit amendment to take (capture and release, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), and northern long-eared bat (*Myotis septentrionalis* in the States of Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE85227B

Applicant: Jacquelyn Dearborn, Columbia, MO

The applicant requests a permit amendment to take (capture and release, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*) in the States of Illinois and Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE85228B

Applicant: Eric Schroder, Fairmont, WV

The applicant requests a permit amendment to take (capture and release, trap, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), and northern long-eared bat (*Myotis septentrionalis*) in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE43605A

Applicant: Daniel Cox, Streator, IL

The applicant requests a permit renewal, with amendment to take (capture and release) Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis* in the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE48832A

Applicant: Kevin Roe, Iowa State University, Ames, IA

The applicant requests a permit renewal, with amendment to take (capture and release, sample, and collect vouchers) scaleshell mussel (*Leptodea leptodon*), pink mucket (pearlymussel) (*Lampsilis abrupta*), and Topeka shiner (*Notropis topeka*) in the States of Iowa, Kansas, Minnesota, Missouri, and South Dakota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE088720

Applicant: George Watters, Ohio State University, Columbus, OH

The applicant requests a permit renewal to take (capture, sample and release, propagate and release) federally listed mussels in the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. The following mussel species are included:

Bean, rayed	*Villosa fabalis*
Mussel, sheepnose	*Plethobasus cyphyus*
Mussel, snuffbox	*Epioblasma triquetra*
Purple cat's paw pearlymussel	*Epioblasma obliquata obliquata*
Spectaclecase (mussel)	*Cumberlandia monodonta*
Bean, Cumberland (pearlymussel)	*Villosa trabalis*
Fanshell	*Cyprogenia stegaria*
Mucket, pink (pearlymussel)	*Lampsilis abrupta*
Pearlymussel, cracking	*Hemistena lata*
Pigtoe, rough	*Pleurobema plenum*
Pimpleback, orangefoot (pearlymussel)	*Plethobasus cooperianus*
Pocketbook, fat	*Potamilus capax*
Ring pink (mussel)	*Obovaria retusa*
Wartyback, white (pearlymussel)	*Plethobasus cicatricosus*
Clubshell	*Pleurobema clava*
Riffleshell, northern	*Epioblasma torulosa rangiana*
Catspaw, white (pearlymussel)	*Epioblasma obliquata perobliqua*
Mapleleaf, winged	*Quadrula fragosa*
Threeridge, fat	*Amblema neislerii*
Slabshell, Chipola	*Elliptio chipolaensis*
Bankclimber, purple	*Elliptoideus sloatianus*
Pocketbook, shinyrayed	*Lampsilis subangulata*
Moccasinshell, Gulf	*Medionidus penicillatus*
Pigtoe, oval	*Pleurobema pyriforme*

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE31310A

Applicant: Minnesota Pollution Control Agency, St. Paul, MN

The applicant requests a permit renewal to take (capture and release) Topeka shiner (*Notropis topeka*) within the State of Minnesota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE130900

Applicant: EnviroScience, Inc., Stow, OH

The applicant requests a permit renewal to take (capture and release) federally listed mussels and fish in the States of Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin. The following mussel and fish species are included:

Pocketbook, Ouachita rock	*Arkansia wheeleri.*
Bean, rayed	*Villosa fabalis.*
Catspaw, white (pearlymussel)	*Epioblasma obliquata perobliqua.*
Higgins eye (pearlymussel)	*Lampsilis higginsii.*
Mapleleaf, winged	*Quadrula fragosa.*
Mussel, scaleshell	*Leptodea leptodon.*
Mussel, sheepnose	*Plethobasus cyphyus.*
Mussel, snuffbox	*Epioblasma triquetra.*
Pearlymussel, Curtis	*Epioblasma florentina curtisii.*
Purple cat's paw pearlymussel	*Epioblasma obliquata obliquata.*
Spectaclecase (mussel)	*Cumberlandia monodonta.*
Acornshell, southern	*Epioblasma othcaloogensis*
Bean, Cumberland (pearlymussel)	*Villosa trabalis.*
Combshell, Cumberlandian	*Epioblasma brevidens.*
Combshell, upland	*Epioblasma metastriata.*
Elktoe, Appalachian	*Alasmidonta raveneliana.*
Elktoe, Cumberland	*Alasmidonta atropurpurea.*
Fanshell	*Cyprogenia stegaria.*
fatmucket, Arkansas	*Lampsilis powellii.*
Kidneyshell, triangular	*Ptychobranchus greenii.*
Lampmussel, Alabama	*Lampsilis virescens.*
Lilliput, pale (pearlymussel)	*Toxolasma cylindrellus.*
Moccasinshell, Coosa	*Medionidus parvulus.*
Monkeyface, Cumberland (pearlymussel)	*Quadrula intermedia.*
Mucket, pink (pearlymussel)	*Lampsilis abrupta.*
Mussel, oyster	*Epioblasma capsaeformis.*
Pearlymussel, birdwing	*Lemiox rimosus.*
Pearlymussel, cracking	*Hemistena lata.*
Pearlymussel, dromedary	*Dromus dromas.*
Pearlymussel, littlewing	*Pegias fabula.*
Pigtoe, Cumberland	*Pleurobema gibberum.*
Pigtoe, finerayed	*Fusconaia cuneolus.*
Pigtoe, Georgia	*Pleurobema hanleyianum.*
Pigtoe, rough	*Pleurobema plenum.*
Pigtoe, shiny	*Fusconaia cor.*
Pigtoe, southern	*Pleurobema georgianum.*
Pimpleback, orangefoot (pearlymussel)	*Plethobasus cooperianus.*
Pocketbook, fat	*Potamilus capax.*
Pocketbook, fine-lined	*Lampsilis altilis.*
Riffleshell, tan	*Epioblasma florentina walkeri (=E. walkeri).*
Ring pink (mussel)	*Obovaria retusa.*
Wartyback, white (pearlymussel)	*Plethobasus cicatricosus.*
Bean, purple	*Villosa perpurpurea.*
Clubshell	*Pleurobema clava.*
Monkeyface, Appalachian (pearlymussel)	*Quadrula sparsa.*
Rabbitsfoot, rough	*Quadrula cylindrica strigillata.*
Riffleshell, northern	*Epioblasma torulosa rangiana.*
Spinymussel, James	*Pleurobema collina.*
Wedgemussel, dwarf	*Alasmidonta heterodon.*
Kidneyshell, fluted	*Ptychobranchus subtentum.*
Pearlymussel, slabside	*Pleuronaia dolabelloides.*
Rabbitsfoot	*Quadrula cylindrica cylindrica.*
Threeridge, fat	*Amblema neislerii.*
Slabshell, Chipola	*Elliptio chipolaensis.*
Bankclimber, purple	*Elliptoideus sloatianus.*
Pocketbook, shinyrayed	*Lampsilis subangulata.*
Moccasinshell, Gulf	*Medionidus penicillatus.*
Pigtoe, oval	*Pleurobema pyriforme.*
Bean, Choctaw	*Villosa choctawensis.*
Pigtoe, fuzzy	*Pleurobema strodeanum.*
Pigtoe, narrow	*Fusconaia escambia.*
Moccasinshell, Alabama	*Medionidus acutissimus.*
Moccasinshell, Ochlockonee	*Medionidus simpsonianus.*
Clubshell, ovate	*Pleurobema perovatum.*

Ebonyshell, round	*Fusconaia rotulata.*
Clubshell, southern	*Pleurobema decisum.*
Kidneyshell, southern	*Ptychobranchus jonesi.*
Pearlshell, Alabama	*Margaritifera marrianae.*
Pigtoe, southern	*Pleurobema georgianum.*
Pigtoe, tapered	*Fusconia burkei.*
Sturgeon, shortnose	*Acipenser brevirostrum.*
Shiner, blue	*Cyprinella caerulea.*
Darter, Cherokee	*Etheostoma scotti.*
Darter, Etowah	*Etheostoma etowahae.*
Darter, amber	*Percina antesella.*
Darter, goldline	*Percina aurolineata.*
Logperch, Conasauga	*Percina jenkinsi.*
Darter, snail	*Percina tanasi.*

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE02373A

Applicant: Environmental Solutions and Innovations, Inc., Cincinnati, OH

The applicant requests a permit renewal, with amendment to take (capture and release) American burying beetle (*Nicrophorus americanus*); take (capture and release, handle, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*); take (survey and identify) running buffalo clover (*Trifolium stoloniferum*) and northeastern bulrush (*Scirpus ancistrochaetus*); and take (capture and release) 56 federally listed mussel species and 5 federally listed fish species in the territories of Puerto Rico and the U.S. Virgin Islands, and in the States of Arkansas, Kansas, Missouri, Nebraska, Ohio, Oklahoma, Rhode Island, and Texas. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE89558A

Applicant: Shannon Romeling, Ranchos de Taos, NM

The applicant requests a permit renewal, with amendment to take (capture and release, handle, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*) in the District of Columbia and in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE62311A

Applicant: Mary Gilmore, Stow, OH

The applicant requests a permit renewal, with amendment to take (capture and release, handle, band, and radio-tag) Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*) in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE08603A

Applicant: Michelle Malcosky, Hudson, OH

The applicant requests a permit renewal, with amendment to take (capture and release, handle, band, and radio-tag) Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*) in the States of Illinois, Indiana, Kentucky, Michigan, Missouri, Pennsylvania, and West Virginia. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE206783

Applicant: Marlo Perdicas, Marshallville, OH

The applicant requests a permit renewal, with amendment to take (capture and release, handle, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), and northern long-eared bat (*Myotis septentrionalis*) in the States of Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE38835A

Applicant: Land Conservancy of West Michigan, Grand Rapids, MI

The applicant requests a permit renewal, with amendment to take (presence and absence surveys, habitat management, and prescribed fire) Karner blue butterfly (*Lycaeides Melissa samuelis*) in Kent County, Michigan. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE71718A

Applicant: Bradley Steffen, Cincinnati, OH

The applicant requests a permit renewal, with amendment to take (capture and release, handle, radio-tag, trap, collect hair and tissue, and enter hibernacula) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) in the District of Columbia and in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE85231B

Applicant: Kalamazoo Nature Center, Kalamazoo, MI

The applicant requests a permit to take (capture, hold, propagate, and release) Mitchell's satyr butterfly (*Neonympha mitchelli mitchelli*) in the State of Michigan. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE85233B

Applicant: Shelly Colatskie, Cedar Hill, MO

The applicant requests a permit to take (capture and release, handle, radio-tag, and enter hibernacula) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*); take (capture and release) Ozark hellbender (*Cryptobrachus alleganiensis bishopi*); and take (capture and release, and harass by survey) Ozark cavefish (*Amblyopsis rosae*), Grotto sculpin (*Cottus specus*), and Tumbling Creek Cavesnail (*Antrobia culveri*) throughout the range of the species. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE92978B

Applicant: Helms and Associates, Bellevue, IA

The applicant requests a permit to take (capture and release) Topeka shiner (*Notropis topeka*), Higgins eye (pearlymussel) (*Lampsilis higginsii*), pink mucket (pearlymussel) (*Lampsilis abrupta*), scaleshell mussel (*Leptodea leptodon*), snuffbox mussel (*Epioblasma triquetra*), northern riffleshell (*Epioblasma torulosa rangiana*), purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), white catspaw (pearlymussel) (*Epioblasma obliquata perobliqua*), sheepnose mussel (*Plethobasus cyphyus*), orangefoot pimpleback (pearlymussel) (*Plethobasus cooperianus*), spectaclecase (mussel) (*Cumberlandia monodonta*), clubshell (*Pleurobema clava*), fanshell (*Cyprogenia stegaria*), fat pocketbook (*Potamilus capax*), winged mapleleaf (*Quadrula fragosa*), rough pigtoe (*Pleurobema plenum*) and rayed bean (*Villosa fabalis*) in the States of Illinois, Iowa, Indiana, Michigan, Minnesota, Missouri, Ohio, South Dakota, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE042946

Applicant: James Garvey, Southern Illinois University, Carbondale, IL

The applicant requests a permit renewal, with amendment to take (capture and release) pallid sturgeon (*Scaphirhynchus albus*) in the States of Illinois and Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Request for Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 7, 2016.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2016–08459 Filed 4–12–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL03000 L12320000.EA0000.LVRDNV130000.XXX; 13–08807; MO# 4500089709; TAS: 16X1125]

Notice of 2-year Extension of the Temporary Closure of the Ash Springs Recreation Site on Public Lands in Lincoln County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This is to notify the public that a 2-year extension of the temporary closure is in effect on public lands at the Ash Springs Recreation Site administered by the Bureau of Land Management (BLM) Ely District, Caliente Field Office as authorized under the provisions of the Federal Land Policy and Management Act of 1976 and pursuant to BLM regulations.

The Ash Springs Recreation Site located in Lincoln County, Nevada, has been closed for public safety purposes and resource protection for federally listed endangered species and BLM sensitive species.

DATES: This extension of the temporary closure is in effect on the date of publication of this notice in the **Federal Register** and expires on April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Christopher Carlton, Caliente Field Manager, 775–726–8100, email *ccarlton@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Ash Springs Recreation Site is located approximately 100 miles north of Las Vegas along U.S. Highway 93 in Pahranagat Valley in Lincoln County. The recreation site is defined by an existing fence and the closed lands are limited to the fenced area. The affected public lands are described as follows:

Mount Diablo Meridian

T. 6 S., R. 61 E., sec. 6, Lot 8.

The lands described contain 1.18 acres, more or less, in Lincoln County.

An extension of the temporary closure of the Ash Springs Recreation Site is necessary. The BLM currently is in the process of developing a management plan and environmental assessment (EA). The plan will determine the type and level of recreational uses suitable for the site, while protecting habitat for the endangered White River springfish and for three BLM Nevada sensitive species: Pahranagat naucorid bug, Grated tryonia, and Pahranagat pebblesnail. The BLM will analyze any actions for repairing, rehabilitating, and/or reopening the site through the EA in compliance with the National Environmental Policy Act, incorporating public comments.

The BLM analyzed the original temporary closure through an EA #DOI–BLM–NV–L030–0013–0032–EA. The document analyzed the action of temporarily closing the public lands of the Ash Spring Recreation Site to public uses. BLM issued a decision to temporarily close the site on January 29, 2014. The impacts associated with this extension of the original temporary closure are the same as the impacts disclosed in the EA identified above.

This extended temporary closure order is posted at the BLM Ely District Office, Ely, Nevada, and at the Caliente Field Office, Caliente, Nevada. This extended temporary closure applies to all members of the public except: (1) BLM personnel for administrative purposes; (2) Emergency and law enforcement personnel and vehicles while being used for emergency or administrative purposes; and (3) Any person authorized by the Ely District Manager or the Caliente Field Manager. If the BLM is unable to negate the risks to public safety and endangered species habitat, the BLM may consider other options for managing the site.

Enforcement: Any person who violates this closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

Authority: 43 CFR 8364.1

Christopher Carlton,

Manager, Caliente Field Office.

[FR Doc. 2016–08469 Filed 4–12–16; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20668; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: History Colorado, Formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to History Colorado. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to History Colorado at the address in this notice by May 13, 2016.

ADDRESSES: Sheila Goff, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of History Colorado that meet the definition of unassociated funerary objects, under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In or about 1915, private citizens removed three cultural items from a Ute grave located near the former White River Indian Agency, CO. They were donated to the museum in 1927. The three unassociated funerary objects are one set of thin, undecorated copper bracelets, one leather belt decorated with copper studs, and one rifle fragment. The rifle is of the type used in the early 1870s. The human remains were never in the possession of History Colorado.

Geographical evidence, burial context, and museum records support affiliation with the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah. The three northern Ute bands once living at the White River Indian Agency were removed from Colorado in 1880 and are now part of the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

Determinations Made by History Colorado

Officials of the History Colorado have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Sheila Goff, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us,* by May 13, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah may proceed.

History Colorado is responsible for notifying the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado; the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah that this notice has been published.

Dated: March 21, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–08451 Filed 4–12–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20671; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: History Colorado, Formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations.

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to History Colorado. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to History Colorado at the address in this notice by May 13, 2016.

ADDRESSES: Sheila Goff, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of History Colorado, Denver, CO. The human remains were removed from El Paso County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by History Colorado professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Pawnee Nation of Oklahoma; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Clara, New Mexico; Rosebud Sioux Tribe of the Rosebud Sioux Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico. The Apache Tribe of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Fort Sill Apache Tribe of Oklahoma; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of San Felipe, New Mexico; Shoshone Tribe of the Wind River Reservation, Wyoming; and Standing Rock Sioux Tribe of North & South Dakota were invited to consult but did not participate. Hereafter all tribes listed above are referred to as "The Consulted and Invited Tribes."

History and Description of the Remains

In July 2015, human remains representing, at minimum, one individual were removed from site 5EP7747 in El Paso, CO. They were discovered while excavating a utility trench during the construction of a large subdivision. The El Paso County Coroner ruled out forensic interest and notified the Office of the State Archaeologist, whose staff subsequently removed the remains and took possession of them. The individual had been buried at depth facing south in a tightly flexed somewhat upright position. Osteological analysis was conducted at the Metropolitan State University of Denver Human Identification Laboratory, where it was determined that the remains were of a Native American juvenile between the ages of 11–15. No known individuals were identified. No associated funerary objects are present.

Determinations Made by History Colorado

Officials of History Colorado have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and burial context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana;

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sheila Goff, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us,* by May 13, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana may proceed.

History Colorado is responsible for notifying the "The Consulted and Invited Tribes." that this notice has been published.

Dated: March 21, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–08453 Filed 4–12–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20672; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Nevada State Office, Reno, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), Nevada State Office, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the BLM. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the BLM at the address in this notice by May 13, 2016.

ADDRESSES: Michael Herder, District Manager, Schell Field Office, HC 33 Box 33500, Ely, NV 98301, telephone (775) 289–1868, email *mherder@blm.gov;* and Dayna M. Reale, Archaeologist/Cultural Resource Specialist, Schell Field Office, HC 33 Box 33500, Ely, NV 98301, telephone (775) 289–1892, email *dreale@blm.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, Bureau of Land Management, Nevada State Office, Reno, NV. The human remains were removed from the Snake Creek Indian Burial Cave in White Pine County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by BLM Schell Field Office professional staff in consultation with representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

History and Description of the Remains

On an unknown date between July 1984 and January 1988, human remains representing, at minimum, two individuals were removed from Snake Creek Indian Burial Cave (Site 26WP23) in White Pine County, NV. The BLM Nevada State Office has since placed the human remains at the Nevada State Museum in Carson City, NV. The human remains appear to have been removed from the cave by a paleontologist conducting research in the cave. These human remains are catalogued as AHUR 6024 by the Nevada State Museum, Carson City. The human remains were identified as one adult and one juvenile of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

The burial site is located in a solution karst cave with several connected underground chambers, and a vertical entrance that requires rappelling in from the ground surface. Entering the cave requires a drop of about 35 feet into the main chamber. As a result, it has been a natural trap for animals since the Pleistocene period. The remains of an ice age camel, horse, wolverine, badger, marten, wolf, and other locally extinct fauna along with wood and other organic material, were recovered from the cave by paleontological research conducted after the removal of the human remains reported in this notice.

Archeologists in the early to mid-1900s noted cultural materials in the cave and on the ground outside the mouth of the cave. Those materials, including a ladder and pottery, were identified by archeologists in the 1930s and 1950s as "Puebloan," or likely associated with the Formative period, which includes several nearby sites now known to be large habitation sites associated with the Fremont culture. However, these artifacts have not been located in current collections and were not found in association with the human remains reported here.

The cave is located in Shoshone, Western Shoshone, or Niwi Territory, adjacent to a historic Shoshone community in an area near the Nevada-Utah border used traditionally by Shoshone and Goshute peoples. In addition, the cave was also used historically as a burial place by Goshute and/or Shoshone people. Early 20th century archeologists concluded that the cave was a Shoshone burial site, as a "cone" of human remains of Shoshone individuals and their belongings was located immediately below the opening of the cave. Consultations between the BLM Nevada State Office and various Native American tribes suggest that the cave may have been the place where the last Shoshone or Goshute Chief was buried. In addition, several tribes have previously indicated that the cave is a sacred place, and a prehistoric burial site.

The majority of the human remains in collection AHUR 6024 appear to have been buried. They are dark in color, soil-stained, and have dirt, root stains, and/or root hairs attached, indicative of either interment, or conditions of natural deposition that would occur over time. These features indicate the human remains may be several hundred to several thousands of years old, depending on preservation, or location of deposition within the cave. Given their estimated age, they appear to pre-date Euro-American settlement in the region. However, given the fact that the human remains are generally fractured, represent only scattered portions of the individuals represented, were not find in a primary burial context, and were not associated with any funerary objects, the BLM could not determine whether the human remains are culturally affiliated with any specific modern tribe.

Determinations Made by the BLM Nevada State Office

Officials of the BLM Nevada State Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the location and context of the burial site, skeletal analysis, and historic documentation.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to the final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Ely Shoshone Tribe of Nevada; the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Ely Shoshone Tribe of Nevada; the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Michael Herder, District Manager, Ely District Office, HC 33 Box 33500, Ely, NV 98301, telephone (775) 289–1868, email *mherder@blm.gov,* by May 13, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Ely Shoshone Tribe of Nevada; the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada may proceed.

The BLM Nevada State Office is responsible for notifying the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada that this notice has been published.

Dated: March 21, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–08450 Filed 4–12–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20669; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: History Colorado, formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to History Colorado. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to History Colorado at the address in this notice by May 13, 2016.

ADDRESSES: Sheila Goff, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of History Colorado that meet the definition of unassociated funerary objects, under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Some time prior to 1916, two cultural items were removed from a Ute grave located on the Ute Mountain Ute Reservation in Colorado by an Indian Agent. They were first loaned to the museum in 1916 and later donated. The unassociated funerary objects consist of a small mass of partially melted glass beads and a basketry water jar. The donor reported that the mass of beads was among the belongings of the deceased that had been burned when the individual was originally buried. Ute people traditionally burned the belongings of the deceased as part of the death rite. The basketry water jar had been placed nearby also as part of the death rite. There is no evidence that the human remains came to History Colorado.

Geographical evidence, burial context and practices, and museum records support affiliation with and the Southern Ute Indian Tribe of the Southern Ute Indian Reservation and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah.

Determinations Made by History Colorado

Officials of the History Colorado have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Southern Ute Indian Tribe of the Southern Ute Indian Reservation and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Sheila Goff, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us,* by May 13, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Southern Ute Indian Tribe of the Southern Ute Indian Reservation and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah may proceed.

History Colorado is responsible for notifying the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado; the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah that this notice has been published.

Dated: March 21, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–08452 Filed 4–12–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0240]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2016 Law Enforcement Administrative and Management Statistics (LEMAS) Survey

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at Volume 81 *FR* 6539, February 8, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 13, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Shelley S. Hyland, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: *Shelley.Hyland@usdoj.gov;* telephone: 202–616–1706). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired: 2016 Law Enforcement Administrative and Management Statistics (LEMAS) survey.

(2) *The Title of the Form/Collection:* 2016 Law Enforcement Management and Administrative Statistics Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is CJ–44. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be general purpose state, county and local law enforcement agencies (LEAs), including local and county police departments, sheriff's offices, and primary state law enforcement agencies. Since 1987, BJS has collected information about the personnel, policies, and practices of law enforcement agencies via the Law Enforcement Management and Administrative Statistics (LEMAS) survey. This core survey, which has been administered every 4 to 6 years, has been used to produce nationally representative estimates on the demographic characteristics of sworn personnel, hiring practices, operations, equipment, technology, and agency policies and procedures. BJS plans to publish this information in reports and reference it when responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justices statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An agency-level survey will be

sent to approximately 3,499 LEA respondents. The expected burden placed on these respondents is about 3 hours per respondent. The burden estimate is based on data from prior administrations of the LEMAS.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 10,497 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: April 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–08448 Filed 4–12–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the MSHA's Office of Standards, Regulations, and Variances on or before May 13, 2016.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2016–008–C.

Petitioner: Rosebud Mining Company, 301 Market Street, Kittanning, Pennsylvania 16201.

Mine: Barrett Mine, MSHA I.D. No. 36–09342, located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.35(a)(5)(i) (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of 480-volt trailing cables with a maximum length of 950 feet when No. 4 American Wire Gauge (AWG) cable is used on roof bolters. The petitioner states that:

(1) The trailing cables for the 480-volt bolters will not be smaller than No. 4 AWG cable.

(2) All circuit breakers used to protect the No. 4 AWG trailing cable exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 500 amperes. The trip setting of these circuit breakers will be sealed to ensure that the settings on these breakers cannot be changed, and these circuit breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting the cables as listed above.

(3) Replacement circuit breakers and/or instantaneous trip units used to protect the No. 4 AWG trailing cable will be calibrated to trip at 500 amperes and they will be sealed.

(4) All components that provide short-circuit protection will have a sufficient interruption rating in accordance with the maximum calculated fault currents available.

(5) During each production day, the trailing cables and the circuit breakers will be examined in accordance with all 30 CFR provisions.

(6) Permanent warning labels will be installed and maintained on the load center identifying the location of each short-circuit protection device. These labels will warn miners not to change or alter the settings of these devices.

(7) If the affected trailing cables are damaged in any way during the shift, the cable will be de-energized and repairs made.

(8) The alternative method will not be implemented until all miners who have been designated to operate the bolters, or any other person designated to examine the trailing cables or trip settings on the circuit breakers, have received the proper training as to the performance of their duties.

(9) Within 60 days after the proposed decision and order becomes final, the petitioner will submit proposed revisions for their approved 30 CFR part 48 training plans to the District Manager. These revisions will specify task training for miners designated to examine the trailing cables for safe operating condition and verify that the short-circuit settings of the circuit-interrupting devices that protect the affected trailing cables do not exceed the settings specified previously in this petition. The training will include the following elements:

(a) The hazards of setting short-circuit interrupting device(s) too high to adequately protect the trailing cables.

(b) How to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

(c) Mining methods and operating procedures that will protect the trailing cables against damage.

(d) Proper procedures for examining the trailing cables to ensure that the cables are in safe operating condition by visually inspecting the entire cable, observing the insulation, the integrity of splices, nicks and abrasions.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

Docket Number: M–2016–009–C.

Petitioner: Marfork Mining Company, Inc., P.O. Box 457, Whitesville, West Virginia 25193.

Mine: Marsh Fork Mine, MSHA I.D. No. 46–08551, located in Raleigh County, West Virginia; Low Gap Refuse Disposal Facility, I.D. No. 1211WV40234–01.

Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

Modification Request: The petitioner requests a modification of the existing standard to permit, as an alternative method, to backfill four abandoned mine openings associated with inactive Marsh Fork Mine, Cedar Grove coal seam portal area with coal refuse. The petitioner states that:

1. The portals are located at approximate Elevation 1630. We understand the four mine openings within the proposed refuse disposal facility footprint have been abandoned and have dry-stacked, concrete block stoppings. Each of the four openings has a 10±-inch outside diameter high density polyethylene (HDPE) pipe installed through the stopping; however, we understand the pipes have never discharged. The mine dips to the northwest and discharges from two separate sets of down dip openings at Elevation 1595± and Elevation 1601±. These openings should preclude the potential for the mine to flood to the portal area.

2. It is proposed to use coal refuse as a construction material to cover the openings and reclaim the highwall. The material excavated to create the "face-up" for the portal area is no longer available to backfill the openings and eliminate the highwall. Each of the four openings associated with the Marsh Fork Mine portal area will be back-stowed with soil and rock to the stopping. Existing canopies and loose debris will be removed prior to placing the backfill. Although flooding of the mine to the portal area is not expected due to the down dip openings, a redundant underdrain system consisting of durable rock cobbles and a perforated pipe wrapped with filter fabric will be installed at the base of the highwall along the entire portal area. Each of the existing mine entry pipes will be connected to the perforated pipe within the underdrain. The underdrain will be extended to discharge into the refuse facility perimeter ditch. Additional soil and rock will be placed at the openings and along exposed coal seam to result in covering the seam with at least four feet of non-combustible material.

3. As described above, it is proposed that the construction of the Low Gap refuse disposal facility will backfill the portal entries and reclaim the highwall; however 30 CFR 77.214(a) generally states that refuse piles will not be located over abandoned openings. The apparent intent of this regulation is to limit the potential for a "blowout" of mine water and to limit the potential for combustion of the refuse and/or coal seam. The proposed backfill plan described in this petition addresses these concerns and provides a practical method of backfilling the openings with coal refuse that will provide an equivalent or greater measure of protection afforded by the existing standard. Since the mine has two gravity outlets as approximate Elevation 1595 and Elevation 1601 (*i.e.* lower that the sealed openings), there is no significant potential for the mine workings to flood and be subject to a blowout at the portal area location. However, as a precautionary measure, an internal drainage system is proposed to provide a controlled outlet in the unlikely event that any water accumulates inby the portal area.

4. The proposed soil and rock backfill zone isolates the mine workings and coal seam from the proposed coal refuse fill minimizing any potential for a mine fire to spread to the refuse fill. Any exposed area of the Cedar Grove coal seam within the embankment footprint will be covered with at least four feet of soil and rock as the coal refuse backfill is placed. The coal refuse will be placed in a 2-foot (maximum) thick lifts. This requirement should preclude the potential for the refuse to spontaneously combust.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–08457 Filed 4–12–16; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

AGENCY: Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Death Gratuity Forms (CA–40, CA–41, and CA–42). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 13, 2016.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–32331, Washington, DC 20210, telephone/fax (202) 354–9647, Email *Ferguson.Yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, was enacted on January 28, 2008. Section 1105 of P.L. 110–181 amended the Federal Employees' Compensation Act (FECA) creating a new 5 U.S.C. 8102a effective upon enactment. This section established a new FECA death gratuity benefit for eligible beneficiaries of federal employees and Non-Appropriated Fund Instrumentality (NAFI) employees who die from injuries incurred in connection with service with an Armed Force in a contingency operation. 5 U.S.C. 8102a permits agencies to authorize retroactive payment of the death gratuity for employees who died on or after October 7, 2001, in service with an Armed Force in the theater of operations of Operation Enduring Freedom and Operation Iraqi Freedom. 5 U.S.C. 8102a also allows federal employees to vary the order of precedence of beneficiaries or to name alternate beneficiaries. Form CA–40 requests the information necessary from the employee to accomplish this variance. Form CA–41 provides the means for those named beneficiaries and possible recipients to file claims for those benefits and requests information from such claimants so that OWCP may determine their eligibility for payment. Furthermore, the statute and regulations require agencies to notify OWCP immediately upon the death of a covered employee. CA–42 provides the means to accomplish this notification and requests information necessary to administer any claim for benefits resulting from such a death. This information collection is currently approved for use through August 31, 2016.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act. The information contained in these forms is used by the Division of Federal Employees' Compensation to determine entitlement to benefits under the Act, to verify dependent status, and to initiate, continue, adjust, or terminate benefits based on eligibility criteria.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Death Gratuity Forms.

OMB Number: 1240–0017.

Agency Number: CA–40, CA–41, and CA–42.

Affected Public: Individuals or household; Federal Government.

Total Respondents: 262.

Total Responses: 262.

Form	Time to complete (min)	Frequency of response	Number of respondents	Number of responses	Hours burden
CA–40 Individual Respondent	15	1	250	250	63
CA–41 Individual Respondent	15	1	6	6	2
CA–42 Agency Respondent	20	1	6	6	2
Totals			262	262	67

Estimated Total Burden Hours: 67.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $3.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 7, 2016.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2016–08505 Filed 4–12–16; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Notice; Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 80 FR 24288, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

ADDRESSES: Submit written comments to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Call or write, Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Presidential Awards for Excellence in Mathematics and Science Teaching (PAEMST): State Coordinators Survey.

OMB Number: 3145—NEW.

Type of request: Intent to seek approval for ICR.

Abstract

The PAEMST is a White House program established by Congress in 1983 authorizing the President to bestow up to 108 awards each year to teachers of mathematics and science at the elementary and secondary levels. The NSF is the designated federal agency for administration of this Presidential program. Awards are given to mathematics and science (including computer science) teachers from each of the 50 states and four U.S. jurisdictions. The jurisdictions are Washington, DC; Puerto Rico; Department of Defense Education Activity schools; and the U.S. territories as a group (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands). The award recognizes those teachers who develop and implement a high-quality instructional program that is informed by content knowledge and enhances student learning. Since the program's inception, more than 4,300 teachers have been recognized for their contributions in the classroom and to their profession. Awardees serve as models for their colleagues, inspiration to their communities, and leaders in the improvement of mathematics and science (including computer science) education.

The State Coordinator (SC) manages the PAEMST program within his or her state or jurisdiction. SCs recruit eligible nominees, select and assign mentors to nominees, coordinate the selection committee, and plan local recognition events within their State. They also carry out the responsibilities as noted in the "Operational Handbook for State-Level Science and Mathematics Coordinators."

The purpose of this survey is to seek feedback from the 120 SCs regarding PAEMST management within their state or jurisdiction. The NSF, PAEMST support team will ask directed questions using the survey to gather information that may specifically address the methods and recruitment efforts that SCs use to support the attracting of prospective award nominees. Additional survey areas may also include:

- Applicant Mentoring.
- Mentor Training.
- State selection Committee.
- State selection Process.
- Applicant and State Finalist Notification and Recognition.
- In-kind contributions.

The survey will evaluate the impact SCs have on attracting prospective award nominees to PAEMST. This will be conducted as a web-based survey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30–40 minutes for State Coordinators.

Respondents: Individuals.

Estimated Number of Responses per Form: 120 Coordinators.

Estimated Total Annual Burden on Respondents: 960 hours (120 Coordinators at 8 hours per survey = 960 hours).

Frequency of Response: One per application cycle.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the PAEMST functions, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Dated: April 8, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–08515 Filed 4–12–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0076]

Proposed Emergency Preparedness Frequently Asked Questions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making available for comment a set of emergency preparedness frequently asked questions (EPFAQs). These EPFAQs are intended to provide clarification of NRC-endorsed Nuclear Energy Institute guidance related to emergency preparedness (EP) at licensed power reactor sites. The NRC is publishing these draft EPFAQs to inform the public and solicit comments.

DATES: Comments must be filed by May 13, 2016. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site: Go to http://www.regulations.gov* and search for Docket ID NRC–2016–0076. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Don A. Johnson, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9230; *email: Don.Johnson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0076 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0076.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*"For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The draft EPFAQs are available in ADAMS under Accession No. ML16084A883. These are also located on the NRC's Web site at *http://www.nrc.gov/about-nrc/emerg-preparedness/faq/faq-contactus.html.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0076 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC is requesting comments on these draft EPFAQs. The NRC has developed this program for the staff to provide clarification of endorsed guidance related to EP. This process is intended to describe the manner in which the NRC may provide interested parties an opportunity to share their individual views with the NRC staff regarding the appropriate response to questions raised on the interpretation or applicability of EP regulatory guidance issued by the NRC, before the NRC issues an official response to such questions.

Dated at Rockville, Maryland this 7th day of April, 2016.

For the Nuclear Regulatory Commission.

Stephanie M. Coffin,

Deputy Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2016–08466 Filed 4–12–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2016–118; Order No. 3223]

Mail Classification Change

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning material changes to the Mail Classification Schedule that would revise the competitive product description for Outbound Priority Mail International. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 15, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

Pursuant to 39 CFR 3020.80-.83, the Postal Service filed a formal request and associated supporting information to make material changes to the Mail Classification Schedule (MCS) that would revise the competitive product description for Outbound Priority Mail International in section 2315 of the MCS.[1] The Request involves Priority Mail International Flat Rate Envelopes and Priority Mail International Small Flat Rate Boxes being dispatched in the air parcel stream instead of the letter post stream. Request at 1.

To support its Request, the Postal Service filed a copy of the Governors' Decision authorizing the Request, the proposed changes to the applicable sections of the MCS, and an application for non-public treatment of certain materials filed under seal. It also filed supporting financial workpapers to show that the changes will not result in the violation of 39 U.S.C. 3633 and 39 CFR 3015.5. *Id.* at 2.

II. Notice of Commission Action

The Commission establishes Docket No. MC2016–118 to consider the Request pertaining to the proposed mail classification changes for Priority Mail International Flat Rate Envelopes and Priority Mail International Small Flat Rate Boxes.

The Commission invites comments on whether the Postal Service's filing is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart E. Comments are due no later than April 15, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

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[1] Request of the United States Postal Service for Changes in the Mail Classification Schedule to Revise the Dispatch Stream for Priority Mail International Flat Rate Envelopes and Priority Mail International Small Flat Rate Boxes from the Letter Post Stream to the Air Parcel Stream, April 7, 2016 (Request).

1. The Commission establishes Docket No. MC2016–118 to consider the matters raised in the Request.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than April 15, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–08522 Filed 4–12–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Temporary Emergency Committee of the Board of Governors; Sunshine Act Meeting

DATES AND TIMES: Tuesday, April 19, 2016, at 11:00 a.m.

PLACE: Los Angeles, California.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, April 19, 2016, at 11:00 a.m.

1. Strategic Issues.
2. Financial Matters.
3. Executive Session—Discussion of prior agenda items and Board governance.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at 202–268–4800.

Julie S. Moore.

Secretary, Board of Governors.

[FR Doc. 2016–08581 Filed 4–11–16; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77558; File No. PCAOB–2007–04]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Amendments to Board Rules Relating to Inspections

April 7, 2016.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act" or the "Sarbanes-Oxley Act"),[1] notice is hereby given that on March 24, 2016, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule

On October 16, 2007, the Board adopted amendments to its rules related to inspections. The proposed amendments included a new paragraph (e) added to existing Rule 4003 and amendments to paragraphs (b) and (d) of Rule 4003. On October 22, 2007, the Board filed the amendments with the Commission and requested Commission approval ("the original rule filing"). On February 26, 2016 the Board adopted revisions to those proposed amendments and, on March 24, 2016 amended the rule filing to reflect those revisions. The text of the revised proposed amendments is set out below. Language added to the Board's currently effective rules by these amendments is italicized. Language deleted from the Board's currently effective rules is in brackets. Other text in Section 4 of the Board's Rules, including notes to the Rules, remains unchanged and is indicated by " * * * " in the text below.

SECTION 4. INSPECTIONS

* * *

Rule 4003. Frequency of Inspections

* * *

(b) At least once in every three calendar years, beginning with the three-year period following the calendar year in which its application for registration with the Board is approved, a registered public accounting firm that, during any of the three prior calendar years, issued an audit report, *other than by consenting to an issuer's use of a previously issued audit report,* with respect to at least one *issuer,* but no more than 100[,] issuers, [or that played a substantial role in the preparation or furnishing of an audit report with respect to at least one issuer,] shall be subject to a regular inspection.

* * *

(d) Notwithstanding paragraph (b) of this Rule, with respect to any registered public accounting firm that became registered in 2003 or 2004—

(1) this Rule does not require the first inspection of the firm sooner than the fourth calendar year following the first calendar year in which the firm, while registered, issued an audit report *with respect to an issuer* [or played a substantial role in the preparation or furnishing of an audit report]; and

(2) this Rule does not require the second inspection of the firm sooner than the fifth calendar year following the first calendar year in which the firm, while registered, issued an audit report *with respect to an issuer* [or played a substantial role in the preparation or furnishing of an audit report].

(e) Notwithstanding any other provision of this Rule, if, in two consecutive calendar years, a registered public accounting firm issues no audit reports with respect to an issuer other than by consenting to an issuer's use of a previously issued audit report, the Board shall have the discretion to forego any inspection of that firm that would otherwise be required because of any audit report that the firm had issued with respect to an issuer prior to such calendar years.

* * *

(h) In each calendar year, the Board shall conduct regular inspections of some registered public accounting firms that reported on an annual report on Form 2 having played a substantial role in the preparation or furnishing of an audit report with respect to an issuer in any of the four most recent annual reporting periods through March 31 of that calendar year without having reported on an annual report on Form 2 having issued an audit report with respect to an issuer in any of those reporting periods. The number of such registered public accounting firms that the Board shall inspect in any particular calendar year shall be at least five percent of the number of registered public accounting firms that, by June 30 of the preceding calendar year, reported on an annual report on Form 2 for the reporting period ending on March 31 of the preceding calendar year having played a substantial role in the preparation or furnishing of an audit report with respect to an issuer without having issued an audit report with respect to an issuer in that reporting period.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its amended filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The purpose of, and basis for, the proposed rule are also described in sections A, B, and C below.

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[1] 15 U.S.C. 7217(b).

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

(a) Purpose

The Sarbanes-Oxley Act requires the Board to conduct a continuing program of inspections to assess the degree of compliance with certain requirements by registered public accounting firms and their associated persons in connection with the performance of audits, issuance of audit reports, and related matters involving issuers. In 2003, the Board adopted PCAOB Rule 4003, "Frequency of Inspections." Rule 4003(b) provides that at least once every three years, any firm that, during any of the three prior calendar years, issues an audit report with respect to at least one issuer but no more than 100 issuers, or plays a substantial role in the preparation or furnishing of an audit report with respect to an issuer, shall be subject to a regular inspection. The Board has adopted amendments relating to Rule 4003(b) that are intended to facilitate the Board's ability to allocate its inspection resources in ways that better serve the public interest and protect investors.

1. Rules 4003(b) and (h)

The Board has adopted amendments to eliminate Rule 4003(b)'s provision for triennial inspections of firms that play a substantial role in audits but do not issue audit reports and to provide instead that the Board will, every year, inspect at least five percent of such firms. The Board has also adopted an amendment to provide that no inspection requirement arises under Rule 4003(b) solely because a firm consents to an issuer's use of a previously issued audit report.

The Board's experience in the inspection program has affected the Board's view on the appropriateness of devoting Board resources to inspecting one-third of all "substantial role only" firms every year.[2] In 2007, the Board concluded that it would be better to direct a larger share of those resources toward addressing the policies, practices, and procedures of the firms that are ultimately responsible for the audit report on the issuer's financial statements, and that the Board's rules should not require the Board to devote so large a portion of its resources to inspections of "substantial role only" firms. This was consistent with the risk-based focus that the Board generally brings to bear in considering the most prudent allocation of its inspection resources. Accordingly, the Board adopted, and included in the original rule filing, an amendment to Rule 4003(b) to eliminate the requirement for triennial inspections of "substantial role only" firms.

In annual reports on PCAOB Form 2 filed by registered firms for the 12-month reporting period ended March 31, 2015, 571 firms reported having issued audit reports for one to 100 issuers, and 103 firms reported having played a substantial role in at least one issuer audit without having issued audit reports for any issuers. The Board continues to be of the view that it is appropriate to allocate the largest share of its inspection resources toward addressing the policies, practices, and procedures of the firms that are ultimately responsible for the audit report on the issuer's financial statements, and that the Board's rules should not require triennial inspections of "substantial role only" firms. The Board therefore continues to propose eliminating Rule 4003(b)'s requirement for triennial inspections of "substantial role only" firms.

In addition, however, having considered views expressed by SEC staff and taking into account that the Board's inspection staff has over time identified auditing deficiencies in some inspections of "substantial role only" firms,[3] the Board has determined to revise slightly the substance of its previously adopted approach to such firms. With the revision, the amendment to Rule 4003 would still eliminate the requirement to inspect all "substantial role only" firms, and it would still eliminate the requirement to inspect any such firm with a prescribed frequency.

Unlike the amendment in the original rule filing, however, the revised proposed amendment provides that the Board will, in each year, select some "substantial role only" firms for inspection, with the number of firms to be a number that is at least five percent of the number of firms that reported being "substantial role only" firms in their annual reports on PCAOB Form 2 filed with the Board in the preceding year. Board rules require that all registered firms file an annual report. A firm that does not issue an audit report for an issuer during the period covered by an annual report must identify in that annual report any audit in which it played a substantial role in that period. Through its other processes, the Board may identify firms that fail to comply with this reporting requirement (and may impose sanctions for those failures), or the Board may identify that a firm has reported playing a substantial role when its role in fact fell below that level. But for purposes of identifying "substantial role only" firms, the required annual reports on Form 2 provide the most reasonable reference point.

Based on the history of reporting on Form 2, the Board anticipates that the five percent threshold will translate to four to six firms each year, though it could fall above or below that range in a particular year, and the number actually inspected could exceed that threshold in any year as a result of risk-based judgments about how to allocate inspection resources. The revised proposed amendment provides that the firms to be inspected will be selected from among those that have reported playing a substantial role in audits in one of the four most recent Form 2 reporting periods without having reported issuing an audit report for an issuer in any of those periods. With that revision, Rule 4003's provision concerning "substantial role only" firms is now designated as paragraph (h).

In adopting the amendment included in the original rule filing related to "substantial role only" firms, the Board noted that it had not up to that time inspected a "substantial role only" firm but also noted that it would retain discretion under the amended rule to inspect "substantial role only" firms at any time. The Board's practice, since first inspecting "substantial role only" firms in 2009, has in fact been

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[2] The Board uses the phrase "substantial role only" to identify the relevant category of firms and to emphasize the distinction between this category of firms (which play a substantial role but do not issue audit reports with respect to issuers) and the separate category of firms that play a substantial role in some audits, but separately perform other audits in which they issue the audit report for the issuer (for example, a non-U.S. firm that plays a substantial role in the audit of a U.S. issuer by auditing a foreign subsidiary, but that separately has a foreign private issuer audit client for which it regularly provides audit reports). Even as amended, Rule 4003 will continue to provide for at least triennial inspections of all firms in the latter category by virtue of their regularly issuing audit reports. In any such inspection, the Board could review, among other things, the firm's work and its system of quality control in relation to audits of issuers in which the firm played a role, including a substantial role.

[3] As of February 1, 2016, the Board had issued reports on inspections of 38 "substantial role only" firms. In addition to identifying concerns about aspects of some of those firms' systems of quality control, the Board's inspection staff has, in 11 of those inspections, identified that the inspected firm had failed to perform sufficient procedures to fulfill the objectives of its role in an audit. While such failures by an auditor in a substantial role do not necessarily mean that the principal auditor's opinion on the issuer's consolidated financial statements was insufficiently supported, they present some risk of that result.

essentially the practice described by proposed Rule 4003(h). The Board now sees value, however, in formally committing that at least a small portion of its inspection resources will regularly be directed toward "substantial role only" firms and that the Board will maintain an active focus on whether it would be appropriate to direct a larger portion of its resources to those inspections. At present, the Board believes that the five percent threshold, with selections made on a risk basis, would involve review of "substantial role only" work that is appropriate and sufficient to provide for a useful, ongoing focus on that segment of the population of registered firms. The Board can always inspect a larger portion of that population in a given year without a rule. The Board has determined to commit to a minimum of five percent through a rule.

By using the four most recent Form 2 reporting periods as the reference point, the Board would, for any given inspection year, be selecting "substantial role only" firms from a universe that includes firms that have reported playing a substantial role as recently as the year in which the inspection would occur and as far back as three previous years. This will allow the Board to select from among the most relevant universe, without limiting that universe to firms reporting in one specific year. In addition, by limiting that universe to firms that, in addition to playing a substantial role, have not issued an audit report in any of those years, the rule would exclude any possibility of counting, toward satisfaction of the "substantial role only" inspection requirement, firms that otherwise would be inspected, or recently have been inspected, because of the firm's relatively recent issuance of an audit report.

The proposed rule also adds a provision to existing paragraph (b) specifying that no inspection requirement arises solely on the basis of the firm issuing an audit report by consenting to an issuer's use of a previously issued audit report. Since the act of originally issuing the audit report would have given rise to an inspection requirement, and the related audit would have been a candidate for review in that required inspection, it would be redundant to subject the registered firm to a separate, later inspection relating to the same audits in circumstances where the firm is no longer issuing audit reports other than by consenting to issuers' use of previously issued audit reports.

The original rule filing also included a technical amendment that was intended to clarify an aspect of Rule 4003(b) without making any substantive change. The Board subsequently realized that the technical amendment could have provided the Board with flexibility that the Board did not intend regarding inspection frequency, and the Board has therefore revised its proposal to eliminate that technical amendment and retain the relevant existing wording. Specifically, the Board had revised the wording of Rule 4003(b) to provide that the Board must conduct at least one inspection of a firm in the three calendar-year period following any calendar year in which the firm issues an audit report with respect to an issuer. That wording would have given the Board flexibility that the Board did not intend. For example, if a firm issued an audit report in years 1, 2, 4, and 5, but not in year 3, a Board inspection of the firm in year 3 would satisfy the inspection requirement created by the audit reports in years 1 and 2, but the next inspection would not technically be required until year 7 (the third calendar year after the report issued in year 4), rather than within three years after the previous inspection, *i.e.*, year 6.

2. Rule 4003(d)

Existing Rule 4003(d) extends the Rule 4003(b) time period in which the Board must conduct the first and second inspections of firms that registered with the Board in 2003 or 2004. The Board has adopted an amendment to conform Rule 4003(d) to the Rule 4003(b) amendment concerning "substantial role only" firms. Consistent with the amendment to Rule 4003(b), the Board is amending Rule 4003(d) to eliminate from Rule 4003(d) the references to "substantial role only" firms.

Separately, a development in the law since the original rule filing has led the Board to make a technical revision to Rule 4003(d). Rule 4003(d) uses the term "audit report" in two places. When Rule 4003(d) took effect in 2006, "audit report" was, by definition, limited to reports with respect to issuers, and this was still the case at the time of the original rule filing proposing amendments to Rule 4003(d). That definition has since been broadened to include reports with respect to registered brokers and dealers and, as broadened, the unqualified use of the term "audit report" in Rule 4003(d) would change the meaning of the rule from what the Board originally intended and still intends. For that reason, the Board has added the language "with respect to an issuer" to qualify "audit report" where that term appears in proposed Rule 4003(d).

The original rule filing included an amendment that conformed Rule 4003(d) to the Rule 4003(b) amendment that provides that no inspection requirement arises solely on the basis of a firm issuing an audit report by consenting to an issuer's use of a previously issued audit report. The operation of Rule 4003(d) is limited to firms that became registered in 2003 or 2004. At the time of the original rule filing in 2007, it was possible for circumstances to arise that would have triggered the application of this amendment with respect to such firms. With the passage of time, however, those circumstances should no longer arise, and the Board has therefore made a technical revision to eliminate this amendment to Rule 4003(d).

3. Rule 4003(e)

The Board's experience in the inspection program to date has affected the Board's view on the appropriateness of devoting Board resources to inspecting every firm that has issued an audit report, including firms that have not recently done so. This was another respect in which the Board observed that the existing rule sometimes requires the Board to deploy inspection resources in ways that do not represent the most effective use of those resources in furtherance of the public interest and the protection of investors. In particular, it sometimes happens that (1) a firm issues an audit report in year 1, opining on financial statements for the preceding year; (2) consistent with existing Rule 4003(b), the Board's long-range inspection planning sets that firm for inspection in year 4; and (3) the firm issues no audit reports in years 2 or 3. Under the current rule, the Board must then inspect the firm in year 4, even though the most recent audit report issued by the firm is three years old on financial statements that are four years old.

In 2007, the Board concluded that it could better fulfill its public interest and investor protection mandates if it had the flexibility in that circumstance to focus its year 4 inspection resources on firms that are more regularly and recently engaged in preparing audit reports. Accordingly, the Board adopted a new paragraph (e) to Rule 4003 that would give the Board discretion to forego the otherwise required inspection in the scenario described above in determining how to deploy its inspection resources.

The Board continues to view Rule 4003(e) as providing useful flexibility with respect to the allocation of inspection resources. The number of otherwise required inspections that the

Board would have discretion to forego under Rule 4003(e) would vary from year to year, but, had Rule 4003(e) been in effect, the number of otherwise required inspections that would have met its criteria would have been 10 in 2015, 10 in 2014 and eight in 2013. In addition, because of delays caused by obstacles to Board inspections of registered firms in certain countries, the current rule's deadline for the initial inspections of firms in those countries, on the basis of their having issued audit reports for issuers, has long since passed, and some of those firms have long since stopped issuing audit reports for issuers. Nineteen such firms have not issued audit reports since before 2012, and 13 of those firms have not issued audit reports since before 2010.

Under proposed Rule 4003(e), the Board would have the flexibility to deploy its inspection resources in ways other than by inspecting such firms. Rule 4003(e) would allow the Board to forego an otherwise required inspection of a firm that issued an audit report if, in two consecutive years, the firm does not issue any audit reports. The rule would not require the Board to inspect such a firm unless and until the firm engaged in conduct that triggered the operation of Rule 4003(b) anew.[4] This will give the Board useful and clearly defined flexibility to focus its inspection resources on firms more recently involved in issuing audit reports, rather than on relatively old audit work performed by firms that may not be currently engaged in issuing audit reports.

Rule 4003(e) would not, however, prohibit the Board from inspecting any of those firms or in any way entitle those firms not to be inspected. There may be circumstances in which the Board would choose to inspect a firm even where Rule 4003(e) gave the Board the discretion to forego the inspection.

The Board has made a technical amendment to proposed Rule 4003(e) since the original rule filing. Proposed Rule 4003(e) uses the term "audit report" in two places. At the time of the original rule filing, "audit report" was, by definition, limited to reports with respect to issuers. That definition has since been broadened to include reports with respect to registered brokers and dealers and, as broadened, the unqualified use of the term "audit report" in Rule 4003(e) would change the meaning of the rule from what the Board originally intended and still intends. For that reason, the Board has added the language "with respect to an issuer" to qualify "audit report" where that term appears in proposed Rule 4003(e).

B. Board's Statement on Burden on Competition

Not applicable. The Board's consideration of the economic impacts of the proposed rule changes is discussed in Section D below.

C. Board's Statement on Comments on the Proposed Rule Received From Members, Participants or Others

The Board solicited public comment before adopting the amendments to Rule 4003 that were included in the original rule filing. The Board received three comment letters, all of which were supportive of those amendments and, more generally, supportive of the Board's effort to increase its discretion to bring risk-based judgments to bear in allocating its inspection resources.[5]

The revised proposed amendments reflect certain technical corrections or updates described above, including undoing a non-substantive amendment that was discovered to have an unintended substantive effect, qualifying the term "audit report" to remain consistent with the original meaning following intervening legislation that expanded the definition, and eliminating references to the effect of consenting to the use of a previously issued audit report where the passage of time had negated the potential applicability of those references. The Board made these revisions without seeking public comment.

In addition, since the original rule filing, which included the amendment eliminating any periodic inspection requirement for all "substantial role only" firms, the Board has determined to commit to a practice of conducting some inspections of such firms and to establish by rule a lower limit on the number of such inspections it will conduct each year. Such a practice is consistent with the Board's authority even in the absence of a rule, is consistent with the Board's description of its possible exercise of that authority in soliciting public comment on the amendments,[6] and is consistent with the discretion and authority that the commenters recognized the Board retained.[7] From the perspective of rights and obligations of registered firms and associated persons, there is no meaningful difference between the rule originally proposed for comment and the Board's current practice. The Board has committed itself by rule to that practice without seeking public comment specific to doing so.

D. Economic Considerations and Application to Audits of Emerging Growth Companies

In the Board's view, the proposed amendments to Rule 4003 are consistent with the purposes of the Act, the public interest, and the protection of investors.[8] In reaching that conclusion, the Board has taken economic considerations into account.[9]

1. Rules 4003(b) and 4003(h)

It is anticipated that the proposed amendments to Rule 4003(b) and the addition of Rule 4003(h) will impose no new costs on the universe of registered firms relative to current practice.[10] Those proposed amendments do not require registered public accounting firms to take any particular actions as part of their audits or otherwise. Rather, they merely conform the Board's rules to current practice.[11] Accordingly, the proposed amendments to Rule 4003(b) and the addition of Rule 4003(h) do not increase the costs imposed on the group of those registered firms that are subject to inspection because of playing a substantial role in an audit.

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[4] Rule 4003(e) also makes clear that a firm's issuance of an audit report solely by consenting to an issuer's use of a previously issued audit report would not preclude the operation of paragraph (e) in circumstances where paragraph (e) would otherwise apply.

[5] *See* Letter from Deloitte Touche Tohmatsu (July 20, 2007) ("DTT letter"), Letter from PricewaterhouseCoopers LLP (July 23, 2007) ("PwC letter"), and Letter from the New York State Society of Certified Public Accountants (July 24, 2007) ("NYSSCPA letter"), available at *www.pcaobus.org/Rules/Docket_024.*

[6] *See* Proposed Amendments to Limit Board Rule 4003's Fixed Periodic Inspection Requirement to Firms that Regularly Issue Audit Reports, PCAOB Release No. 2007–007 (May 24, 2007), at 4 (noting that information that comes to the Board in various ways "could lead the Board to exercise its discretion to inspect a particular 'substantial role only' firm"), available at *www.pcaobus.org/Rules/Docket_024.*

[7] *See* DTT letter at 1, PwC letter at 1, NYSSCPA letter at 3.

[8] Section 104(b)(2) of the Act provides that the Board may, by rule, adjust the inspection schedules set by section 104(b)(1) if the Board finds that different inspection schedules are consistent with the purposes of the Act, the public interest, and the protection of investors. To the extent the Commission views any of the proposed amendments as constituting a change to an inspection schedule set by section 104(b)(1), the statement in the text reflects the Board's finding for purposes of section 104(b)(2).

[9] Section A, above, describes the need for the proposed amendments and the Board's key decisions in selecting this course of action. This section does not repeat the earlier discussion, but focuses on the costs and benefits, relative to an appropriate baseline, of the Board's proposal.

[10] To assist the Commission's consideration of this proposal, this section discusses costs and benefits relative to current practice. It does not discuss costs and benefits relative to existing Rule 4003(b), under which, absent the proposed amendments discussed here, the PCAOB would in each year inspect approximately 33 percent of "substantial role only" firms. The resulting analysis of costs and benefits here, however, should not be understood to suggest that a rule change conforming a rule to existing practice would in every case necessarily involve no costs or benefits.

[11] The Board's practice, since first inspecting "substantial role only" firms in 2009, has been to

The Board has considered whether the proposed amendments might decrease audit quality in the work of the "substantial role only" firms by appearing to those firms to reduce the likelihood of their being inspected. On that question, the Board has considered that the proposed rules would not change those firms' perception of the fact that they might be inspected. The Board has also considered whether the proposed rules would be likely to change, in any meaningful way, those firms' current perception of the likelihood of being inspected. There is no direct evidence concerning what those firms' current perceptions are on that point, but it is reasonable to assume that firms in the "substantial role only" category currently perceive the likelihood of their being inspected as something that is less than the existing rule.[12] Because it appears most likely that the typical such firm's perception of the chance of inspection would be less than the current rule, and because the proposed rule would not change those firms' perception of the fact that they might be inspected, the Board does not anticipate that the proposed amendments would cause any significant change in the extent to which the potential for inspection currently provides an incentive for registered firms to perform audit work in compliance with PCAOB standards. Nor do the proposed amendments provide any incremental benefit relative to the current practice.

2. Rule 4003(e)

Proposed Rule 4003(e) will potentially reduce costs imposed on the universe of registered firms relative to current practice.[13] Proposed Rule 4003(e) poses the possibility of fewer firms incurring inspection related costs because it provides the Board with discretion to forgo an otherwise required inspection of a firm if, after issuing an audit report in one year, the firm does not issue audit reports in the two succeeding years. To the extent that proposed Rule 4003(e) results in the Board forgoing any inspections, the firms that would otherwise have been inspected would not incur the inspection related costs.[14]

The Board has considered whether the benefit of potentially avoiding imposing regulatory burdens on those firms that might, under proposed Rule 4003(e), be less likely to be inspected than would be the case under current practice could reduce audit quality in the work of those firms. On that question, the Board has considered that firms that the Board could choose to forgo inspecting under proposed Rule 4003(e) typically would not be expected to realize, at the time they perform an audit, that future developments will make Rule 4003(e) applicable. Moreover, Rule 4003(e) would not, even if applicable, provide the firm with any assurance that it would not be inspected. For those reasons, the Board does not anticipate that proposed Rule 4003(e) would cause any significant change in the extent to which the potential for inspection provides an incentive for registered firms to perform audit work in compliance with PCAOB standards.

3. Emerging Growth Companies

Before rules adopted by the Board can take effect, they must be approved by the Commission. Under Section 103(a)(3)(C) of the Act,[15] any rules adopted by the Board after April 5, 2012, shall not apply "to an audit of" any emerging growth company ("EGC") (as defined in section 3(a)(80) of the Securities Exchange Act of 1934[16] (the "Exchange Act")) unless the Commission "determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation."

The proposed amendments do not change or add to the requirements that apply "to an audit of" an EGC or to any other audits. They do not affect requirements governing how a firm conducts or reports on audits under PCAOB standards, including audits of EGCs. In addition to not imposing any requirements that apply to an audit, the proposed amendments do not appear likely to significantly affect EGCs in other ways. Specifically, the Board does not anticipate that the proposed amendments will affect an auditor's perception, during the audit of an EGC, of the possibility of that audit eventually being reviewed in any inspection or the nature of any such review. Many factors affect the selection of audits that the Board reviews in the inspection of any particular firm, and the proposed rules would not affect the likelihood that any particular audit of an EGC will be reviewed in an inspection of the EGC's auditor. In addition, as noted above, firms that the Board could choose to forgo inspecting under proposed Rule 4003(e) typically would not be expected to realize, at the time they perform an audit, that future developments will make Rule 4003(e) applicable, and in any event they would have no assurance that the Board would forgo the inspection. Moreover, to the extent audits of EGCs are selected for review in an inspection, the proposed rules would have no effect on how that review is conducted, and they provide no reason for an auditor, at the time of the audit, to anticipate any different treatment of that audit in an inspection.

It does not appear that the proposed amendments would have an effect on efficiency, competition, and capital formation with respect to EGCs. The Board defers to the Commission on the applicability of Section 103(a)(3)(C) to the proposed amendments. If the Commission determines that Section 103(a)(3)(C) applies to these amendments, the Board requests that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply the amendments to audits of EGCs. The Board stands ready to assist the Commission with any additional analysis that may become necessary.

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inspect each year approximately five percent of those firms and to reflect that allocation of inspection resources in its budget materials.

[12] The Board inspected no "substantial role only" firms before 2009 and, as noted above, from 2009 on has inspected in each year approximately five percent of those firms. In addition, since 2010 the Board's Web site has provided an overview of the Board's inspection practices that, among other things, contrasts the Board's practice of conducting triennial inspections of firms that issue audit reports for one to 100 issuers with the practice of inspecting, in each year, "some" firms that are not in that category but that play a role in issuer audits. *See http://pcaobus.org/Inspections/Pages/InspectedFirms.aspx.*

[13] Current practice is consistent with existing Rule 4003's inspection frequency requirements for firms that issue audit reports. Of the 28 otherwise required inspections in 2013, 2014, and 2015 that would have met the criteria of proposed Rule 4003(e), 16 were in the U.S. or in non-U.S. jurisdictions where the Board was not blocked from conducting inspections, and the Board conducted all of those inspections within the period prescribed by current Rule 4003.

[14] The number of otherwise required inspections that the Board would have discretion to forego under Rule 4003(e) would vary from year to year, but, as noted above, had Rule 4003(e) been in effect, the number of otherwise required inspections that would have met its criteria would have been 10 in 2015, 10 in 2014, and eight in 2013.

[15] 15 U.S.C. 7213(a)(3)(C).

[16] 15 U.S.C. 78c(a)(80).

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to Section 19(b)(2)(A)(ii) of the Exchange Act,[17] and based on its determination that an extension of the period set forth in Section 19(b)(2)(A)(i) of the Exchange Act[18] is appropriate in light of the Commission's consideration of Section 103(a)(3)(C) of the Sarbanes-Oxley Act with respect to applicability of the proposed rules to audits of emerging growth companies, as defined in Section 3(a)(80) of the Exchange Act, the Commission has determined to extend to July 12, 2016 the date by which the Commission should take action on the proposed rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Sarbanes-Oxley Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/pcaob.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number PCAOB–2007–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number PCAOB–2007–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. PCAOB–2007–04 and should be submittedon or before May 4, 2016.

For the Commission, by the Office of the Chief Accountant, by delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–08444 Filed 4–12–16; 8:45 am]

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[17] 15 U.S.C. 78s(b)(2)(A)(ii).

[18] 15 U.S.C. 78s(b)(2)(A)(i).

[19] 17 CFR 200.30–11(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77551; File No. SR–FINRA–2016–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities

April 7, 2016.

I. Introduction

On February 11, 2016, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 1032 (Categories of Representative Registration) to require registration as Securities Traders of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities. The proposed rule change was published for comment in the **Federal Register** on February 24, 2016.[3] The Commission received one comment on the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA's rules generally require each person associated with a member included within the definition of a representative to register with FINRA as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities effected otherwise than on a securities exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities.[5] FINRA proposes to expand the registration requirement so that associated persons who are (i) primarily responsible for the design, development or significant modification[6] of algorithmic trading strategies, or (ii) responsible for the day-to-day supervision or direction of such activities, be required to register as Securities Traders with FINRA.[7]

For purposes of the proposal, FINRA defines an "algorithmic trading strategy" as an automated system that generates or routes orders or order-related messages—such as routes or cancellations—but does not include an automated system that solely routes orders received in their entirety to a market center. The proposed registration requirement applies to orders and order related messages whether ultimately routed or sent to be routed to an exchange or over the counter.[8] An order router alone would not constitute an algorithmic trading strategy. However, an order router that performs any additional functions would be considered an algorithmic trading strategy.[9] An algorithm that solely generates trading ideas or investment allocations—including an automated investment service that constructs portfolio recommendations—but that is not equipped to automatically generate orders and order-related messages to effectuate such trading ideas into the market—whether independently or via a linked router—would not constitute an algorithmic trading strategy.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77175 (February 18, 2016), 81 FR 9235 ("Notice"). The Notice contains a detailed description of the proposal.

[4] *See* Letter from Michele Van Tassel, President, Association of Registration Management, to Marcia E. Asquith, Office of the Corporate Secretary, Financial Industry Regulatory Authority, dated March 15, 2016 ("ARM Letter").

[5] NASD Rule 1032(f).

[6] FINRA notes that a "significant modification" to an algorithmic trading strategy generally would be any change to the code of the algorithm that affects the logic and functioning of the trading strategy employed by the algorithm. Therefore, for example, a data feed/data vendor change generally would not be considered a "significant modification," whereas a change to a benchmark (such as an index) used by the strategy generally would be considered a "significant modification." *See* Notice, *supra* note 3, at 9237 n. 5.

[7] *Id.* at 9237. FINRA notes, for example, while an equity trader involved in the design of an algorithmic trading strategy would currently be required to register pursuant to NASD Rule 1032(f), the developer with which the trader collaborates to create an algorithmic trading strategy, however, may not be. *Id.*

[8] *Id.*

[9] *See* Notice, *supra* note 3, at 9236–37.

The associated persons covered by the expanded registration requirement must pass the requisite qualification examination and be subject to the same continuing education requirements that are applicable to individual Securities Traders. FINRA believes that problematic conduct stemming from algorithmic trading strategies—such as failure to check for order accuracy, inappropriate levels of messaging traffic, wash sales, failure to mark orders as "short" or perform proper short sale "locates," and inadequate risk management controls—could be reduced or prevented, in part, through improved education regarding securities regulations for the specified individuals involved in the algorithm design and development process.[10]

The proposal is intended to ensure the registration of one or more associated persons that possesses knowledge of, and responsibility for, both the design of the intended trading strategy and the technological implementation of the strategy, sufficient to evaluate whether the resulting product is designed to achieve regulatory compliance in addition to business objectives.[11] For example, a lead developer who liaises with a head trader regarding the head trader's desired algorithmic trading strategy and is primarily responsible for the supervision of the development of the algorithm to meet such objectives must be registered under the proposal as the associated person primarily responsible for the development of the algorithmic trading strategy and supervising or directing the team of developers.[12] Individuals under the lead developer's supervision would not be required to register under the proposal if they are not primarily responsible for the development of the algorithmic trading strategy or are not responsible for the day-to-day supervision or direction of others on the team.[13] Under this scenario, the person on the business side that is primarily responsible for the design of the algorithmic trading strategy, as communicated to the lead developer, also would be required to register. In the event of a significant modification to the algorithm, members, likewise, must ensure that the associated person primarily responsible for the significant modification (or the associated person supervising or directing such activity), is registered as a Securities Trader.[14]

FINRA notes that FINRA Rule 3110(a)(2) generally requires that all registered persons be designated to an appropriately registered principal or principals with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker-dealer is required. With the addition of algorithmic trading activities to the Securities Trader registration category, members will be required to designate developers to a registered principal for Rule 3110(a)(2) purposes.[15] In such instances, members may "assign" a lead algorithm developer (or other non-trader) engaging in covered activities to one or more other registered persons of the member that supervise trading activities outside such developer's or other non-trader's usual reporting line.[16] Accordingly, the proposal may not necessarily trigger registration requirements for the current supervisor of algorithm design or development personnel if that supervisor is not responsible for the day-to-day supervision or direction of the specific activities covered by this proposal. However, the firm must designate an appropriately registered person to be responsible for supervising the algorithmic trading strategy activities.[17]

FINRA notes that a member employing an algorithm is responsible for the algorithm's activities whether the algorithm is designed or developed in-house or by a third-party.[18] Thus, in all cases, robust supervisory procedures, both before and after deployment of an algorithmic trading strategy, are a key component in protecting against problematic behavior stemming from algorithmic trading. In addition, associated persons responsible for monitoring or reviewing the performance of an algorithmic trading strategy must be registered pursuant to NASD Rule 1032(f); a member's trading activity must always be supervised by an appropriately registered person.[19] Therefore, even where a firm purchases an algorithm off-the-shelf and does not significantly modify the algorithm, the associated person responsible for monitoring or reviewing the performance of the algorithm must be registered pursuant to NASD Rule 1032(f).[20]

III. Comment Letter

The Commission received one comment letter that supports the proposal.[21] The commenter states "ARM understands the need to address the increased significance of algorithmic trading strategies, and therefore supports the FINRA proposal." However, the commenter requested additional information regarding the definition of "algorithmic trading" and requested that FINRA provide adequate time for member firms to identify the personnel who must register pursuant to the proposal.[22] The Commission notes that FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and the effective date will be no sooner than 180 days following publication of the *Regulatory Notice* but no later than 300 days following Commission approval.[23] The Commission also notes that FINRA gave a list of examples of what would be included in the definition of an algorithmic trading strategy.[24] FINRA further notes that what is considered an "algorithmic trading strategy" may evolve as new trading strategies are designed and developed.[25] The Commission also expects that FINRA will provide more detailed guidance in connection with the implementation of the registration requirement.

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[10] *See* Notice, *supra* note 3, at 9236.

[11] *See* Notice, *supra* note 3, at 9237. FINRA states the registration requirement is not intended to apply to every associated person that touches or otherwise is involved in the design or development of a trading algorithm. For example, if a sole associated person determines the design of the trading strategy employed by an algorithm, writes the code to effectuate such strategy, and executes or directs the modification of such code going forward, then that person alone would be required to register as a Securities Trader under the proposal. *Id.*

[12] *Id.*

[13] FINRA notes that a junior developer on the lead developer's team presumably is not "primarily" responsible for the design, development or significant modification of an algorithmic trading strategy and, therefore, would not be required to register under the proposal. *Id.* By limiting the registration requirements to those persons primarily responsible for the design, development or significant modification of algorithmic trading strategies or responsible for the day-to-day supervision or direction of such activities FINRA aims to ensure that the member has identified the individuals primarily responsible for covered activities, and for the day-to-day supervision and direction of covered activities, and equip them with a basic level of familiarity with the regulatory obligations of the firm employing the algorithm. *Id.* FINRA expects that the competency of these associated persons will inform the behaviors of those acting under their supervision or at their direction. *Id.*

[14] *Id.*

[15] *See* Notice, *supra* note 3, at 9238.

[16] FINRA notes that the adequacy of a member's supervisory structure must be evaluated on an individual firm basis, and that members are afforded a degree of flexibility in arranging for the appropriate supervision of a lead developer (or other non-trader) that engages in covered activities. *See* Notice, *supra* note 3, at 9238.

[17] *Id.*

[18] *Id.* FINRA also notes that an algorithmic trading strategy employed by a member may not have originated in-house and, therefore, may not have been designed or built by the member's associated persons. In cases where the design and development of an algorithmic trading strategy was performed solely by a third-party, the proposed registration requirement would not apply to the member with regard to the design or development of such algorithm. However, FINRA notes that, to the extent associated persons were involved in the design or development, or are able to significantly modify the algorithmic trading strategy in-house, such persons must be registered as Securities Traders. In addition, members also may engage a third-party to custom-build an algorithmic trading strategy for the member. In such cases, the associated person responsible for directing the third-party in the design, development or significant modification of the algorithmic trading strategy also would be included within the scope of this proposal and must be registered as a Securities Trader. Similarly, after the member has launched the externally built algorithm, any significant modification by the member to such algorithm must be performed by a registered Securities Trader. *Id.*

[19] *Id.*

[20] *Id.*

[21] *See* ARM Letter, *supra* note 4.

IV. Discussion and Findings

After carefully considering the proposed rule change and the comment submitted the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[26] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[27] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with Section 15A(g)(3)(A) of the Act which authorizes FINRA to examine and verify the qualifications of an applicant to become a member, and the natural persons associated with such an applicant, in accordance with procedures established by FINRA's rules.[28] The proposed rule change requires associated persons primarily responsible for the design, development or significant modification of an algorithmic trading strategy or responsible for the day-to-day supervision or direction of such activities to register and meet a minimum standard of knowledge regarding the securities rules and regulations applicable to the member employing the algorithmic trading strategy. The Commission notes that this minimum standard of knowledge is identical to the standard of knowledge currently applicable to traditional securities traders. The Commission believes that improved education of firm personnel may reduce the problematic market conduct and manipulative trading activities identified by FINRA.[29]

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act[30] that the proposed rule change (SR–FINRA–2016–007), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08424 Filed 4–12–16; 8:45 am]

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[22] *Id.*

[23] *See* Notice, *supra* note 3, at 9238.

[24] *See* Notice, *supra* note 3, at 9236.

[25] *Id.*

[26] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78*o*–3(b)(6).

[28] 15 U.S.C. 78*o*–3(g)(3)(A).

[29] *See* Notice, *supra* note 3, at 9238–39.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77549; File No. SR–NYSEArca–2016–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the WBI Tactical Rotation Shares Under NYSE Arca Equities Rule 8.600

April 7, 2016.

I. Introduction

On February 3, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the WBI Tactical Rotation Shares ("Fund") under NYSE Arca Equities Rule 8.600. The Commission published notice of the proposed rule change in the **Federal Register** on February 23, 2016.[3] The Commission received no comments on the proposed rule change. On March 28, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comment on Amendment No. 1 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. The Exchange's Description of the Proposal[5]

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Absolute Shares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] Millington Securities, Inc. ("Adviser"), a wholly-owned subsidiary of WBI Trading Company, Inc., will be the investment advisor to the Fund, and WBI Investments, Inc. ("Sub-Adviser"), an affiliate of WBI Trading Company, Inc., will act as Sub-Adviser to the Fund.[7] U.S. Bancorp Fund Services, LLC will serve as the administrator, transfer agent, and index receipt agent. U.S. Bank, National Association will serve as the Fund's custodian and securities lending agent. Foreside Fund Services, LLC will serve as the distributor for the Fund on an agency basis.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77160 (February 17, 2016), 81 FR 9029.

[4] In Amendment No. 1, which replaced the original filing in its entirety, the Exchange: (1) Clarified a reference to debt securities is to "Debt Instruments," as described in the filing; (2) represented that, under normal market conditions, the Fund will invest at least 75% of its corporate debt securities that have at least $1,000,000 par amount outstanding in developed countries or at least $200,000,000 in emerging markets countries; (3) stated that the Fund's assets invested in Debt Instruments would meet certain criteria for index-based fixed-income ETFs contained in Exchange Rule 5.2(j)(3), Commentary .02; (4) stated where price information could be found for non-exchange listed ADRs, RMBS, CMBS, ABS, and municipal securities; (5) clarified that all statements and representations made in the filing regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange; (6) stated that the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements, and if the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m); and (7) made other clarifying and technical amendments. Amendment No. 1 is available at: *http://www.sec.gov/comments/sr-nysearca-2016-14/nysearca201614-1.pdf.*

[5] The Commission notes that additional information regarding the Fund, the Trust (as defined below), and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in Amendment No. 1 and the Registration Statement, as applicable. *See* Amendment No. 1, supra note 4, and Registration Statement, *infra* note 6.

A. The Fund's Principal Investments

According to the Exchange, the Fund's investment objective is to seek long term capital appreciation while also seeking to protect principal during unfavorable market conditions.[8]

The Fund, under normal market conditions,[9] will seek to invest primarily (more than 50% of its total assets) in the principal investments discussed in this section. The Fund will invest directly in equity securities, debt instruments and "Financial Instruments" (as described below) or will invest in them indirectly by investing in the equity securities of other registered investment companies (including exchange traded funds ("ETFs"),[10] mutual funds, unit investment trusts, exchange-traded and over-the counter ("OTC") closed-end funds ("CEFs") and exchange-traded and OTC business development companies), equity securities of exchange-traded pooled vehicles not required to be registered under the 1940 Act and issuing equity securities ("ETPVs"),[11] exchange-traded notes ("ETNs"),[12] equity-linked notes ("ELNs"),[13] and index-linked exchangeable notes ("ILENs")[14] (collectively, ETFs, ETPVs, ETNs, ELNs and ILENs are referred to as "exchange traded products" or "ETPs," and collectively, ETFs, mutual funds, unit investment trusts, CEFs, and business development companies are referred to as "Registered Funds").

The Fund may invest in the following exchange-traded and OTC U.S. and foreign equity securities (other than non-exchange-traded investment company securities): Common stocks, preferred stocks, rights, warrants, convertibles, master limited partnerships (exchange-traded businesses organized as partnerships ("MLPs")), Depositary Receipts ("DRs", as described below),[15] and exchange-traded real estate investment trusts ("REITs").

As part of the Fund's principal investment strategy, up to 20% of the Fund's net assets may be invested in exchange-traded or OTC "Financial Instruments," which are the following: Foreign exchange forward contracts; futures on equity securities, debt securities (*i.e.*, "Debt Securities" defined below), equity indices, fixed income indices, commodity indices, currencies, commodities, and interest rates; exchange-traded and OTC options on equity indices, currencies, and equity and debt securities; exchange-traded and OTC options on futures contracts; exchange-traded and OTC interest rate swaps, cross-currency swaps, total return swaps on fixed income and equity securities, inflation swaps and credit default swaps; and options on such swaps ("swaptions").[16] Financial Instruments will be utilized in connection with option strategies used by the Fund, including writing (selling) covered calls, buying puts, using combinations of calls and puts, and using combinations of calls and combinations of put options ("puts"). The Fund may also use options on indices and on futures, such as by writing a call on a futures contract.[17] The Fund may enter cap, floor and collar agreements as a part of its option strategies.

As part of its principal investment strategy, the Fund may invest in the following types of debt securities ("Debt Instruments"): Corporate debt securities;[18] corporate debt securities that are convertible into common stock or interests; U.S. Government securities;[19] debt securities of foreign

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[6] The Trust is registered under the 1940 Act. On August 24, 2015, the Trust filed with the Commission a registration statement on Form N–1A, and on November 6, 2015 filed an amendment thereto, under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Fund (File Nos. 333–192733 and 811–22917) (as amended, the "Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30543 (May 29, 2013) (File No. 812–13886) ("Exemptive Order").

[7] The Adviser is a registered broker-dealer and is affiliated with a broker-dealer. The Sub-Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. In such capacity, the Adviser and Sub-Adviser have implemented a firewall with respect to their relevant personnel and their respective broker-dealer affiliates regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, as applicable, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its personnel or such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[8] The Sub-Adviser's proprietary portfolio selection process used for the Fund attempts to identify investments that can provide consistent, attractive returns net of expenses with potentially less volatility and risk to capital than traditional approaches, whatever market conditions may be.

[9] The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100; and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.*, 2X, –2X, 3X or –3X) ETFs.

[11] For purposes of this filing, the "exchange-traded pooled vehicles" or "ETPVs" consist of Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Commodity Futures Trust Shares (as described in NYSE Arca Equities Rule 8.204).

[12] ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)).

[13] Equity Linked Notes are described in NYSE Arca Equities Rule 5.2(j)(2).

[14] Index-Linked Exchangeable Notes are described in NYSE Arca Equities Rule 5.2(j)(4).

[15] For purposes of this filing, DRs means the following: American Depositary Receipts ("ADRs"), American Depositary Shares ("ADSs"), European Depositary Receipts ("EDRs"), Global Depositary Receipts ("GDRs") and International Depositary Receipts ("IDRs"). ADSs are issued by depository banks in the United States under an agreement with the foreign issuer, and the entire issuance is called an ADR and the individual shares are referred to as ADSs. ADRs may be purchased through "sponsored" or "unsponsored" facilities. Not more than 10% of the Fund's assets will be invested in non-exchange-listed ADRs.

[16] Options on swaps are traded OTC. In the future, in the event that there are exchange-traded options on swaps, the Fund may invest in these instruments.

[17] The Fund may directly write call options on stocks and stock indices if the calls are "covered" throughout the life of the option. The Fund may also write and purchase puts.

[18] Such corporate debt securities also include debt securities sold pursuant to Rule 144A under the Securities Act. Under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries.

[19] The Fund may invest in U.S. Government obligations and other quasi government related obligations. Such obligations include Treasury bills,

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issuers; sovereign debt securities; repurchase agreements; municipal securities; sovereign debt obligations; obligations of international agencies or supranational agencies; sovereign, quasi-sovereign, supranational or local authority debt obligations issued by non-U.S. governments; Treasury Inflation-Protected Securities; and zero coupon bonds. Debt Instruments may be of all maturities, from less than one year to more than thirty years (if available). Debt Instruments may be fixed, variable or floating rate securities.[20]

The Fund may invest in and hold cash or "Cash Equivalents"[21] as part of the normal operation of its principal investment strategy.

For investments in Registered Funds, the Fund may invest in excess of the limits contained in the 1940 Act.[22]

B. The Fund's Other Investments

While the Fund, under normal market conditions, will seek to invest primarily (at least 50% of its total assets) in the securities described above, the Fund may invest as part of its non-principal investment strategy (less than 50% of the Fund's assets) in short positions in equity securities and in agency and non-agency residential mortgage-backed securities ("RMBS"); agency and non-agency commercial mortgage-backed securities ("CMBS"); and agency and non-agency asset-backed securities ("ABS").

C. The Fund's Investment Restrictions

The Fund may invest up to 40% of its net assets in Debt Instruments rated below investment grade.

The Fund will not invest more than 50% of its net assets in securities of issuers in emerging markets, which could consist of DRs, dollar-denominated foreign securities or non-U.S. dollar denominated foreign securities.

Investments in non-agency mortgage and asset backed securities will be limited to 20% of the Fund's total assets in the aggregate.

The Fund may invest up to 30% of its total assets in securities denominated in non-U.S. Dollars, but this limitation will not apply to securities of non-U.S. issuers that are denominated in U.S. Dollars. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[23]

The Fund will be non-diversified under the 1940 Act.[24]

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[25]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,[27] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the

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certificates of indebtedness, notes and bonds, and issues of such entities as the Government National Mortgage Association, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Farm Credit Banks, Federal Housing Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association.

[20] The Fund's assets invested in Debt Instruments will meet certain criteria for index-based, fixed-income ETFs contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02. *See* NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 governing fixed-income-based Investment Company Units. The requirements of Rule 5.2(j)(3), Commentary .02(a) that will be met include the following: (i) The index or portfolio must consist of "Fixed Income Securities" as defined in Rule 5.2(j)(3), Commentary .02(a)(1); (ii) components that in the aggregate account for at least 75% of the weight of the index or portfolio each must have a minimum original principal amount outstanding of $100 million or more; (iii) a component may be a convertible security, but once the convertible security converts to an underlying equity security, the component is removed from the index or portfolio; (iv) no component fixed income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio; (v) an underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and (vi) component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

[21] "Cash Equivalents" means: High-quality short-term debt securities; money market instruments, certificates of deposit issued by commercial banks as well as savings banks or savings and loan associations; bankers' acceptances; time deposits; and commercial paper and short-term notes rated at the time of purchase "A–2" or higher by Standard & Poor's, "Prime-1" by Moody's Investors Services Inc., or similarly rated by another nationally recognized statistical rating organization, or, if unrated, will be determined by the Sub-Adviser to be of comparable quality, as well as U.S. Government obligations.

[22] The Exchange states that the Commission has granted exemptive relief to the Trust under Section 12(d)(1)(J) of the 1940 Act permitting the Fund to operate as a "fund of funds" and invest in other investment companies without complying with the limitations set forth in Section 12(d)(1) of the 1940 Act, subject to certain terms and limitations that are contained in the Exemptive Order.

[23] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 31835 (September 22, 2015), discussions at footnotes 92 and 93; Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[24] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

[25] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[26] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[28] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

According to the Exchange, quotation and last-sale information for the Shares, and U.S. exchange-traded common stocks, preferred stocks, rights, warrants, convertibles, MLPs, DRs, REITs, CEFs, ETFs, ETPs and ETNs will be available via the Consolidated Tape Association ("CTA") high-speed line. Intra-day price information for foreign exchange-traded common stocks, preferred stocks, rights, warrants, convertibles, MLPs, DRs and REITs, will be available from the applicable foreign exchange and from major market data vendors. Price information for OTC common stocks, OTC CEFs, non-exchange listed ADRs, RMBS, CMBS, ABS, and OTC Financial Instruments will be available from major market data vendors. Intra-day and closing price information for exchange-traded Financial Instruments will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Intra-day price information for Cash Equivalents will be available from major market data vendors. Price information for municipal securities is available from the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system.

In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[29] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[30]

The NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day. A basket composition file, which will include the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[31] Trading in Shares of the Fund will be halted if the circuit-breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[32] Trading in the Shares also will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Adviser is a registered broker-dealer and is affiliated with a broker-dealer, and the Sub-Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. In such capacity, the Adviser and Sub-Adviser have implemented a firewall with respect to their relevant personnel and their respective broker-dealer affiliates regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.[33] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio of the Fund must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[34]

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders ("ETP Holders") in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[35]

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has also made the following representations:

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[28] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[29] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[30] On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge. The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday.

[31] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[32] These may include: (1) The extent to which trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[33] *See supra* note 7. The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

[34] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[35] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by regulatory staff of the Exchange, or FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(4) The Exchange has represented that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[36] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

(5) FINRA, on behalf of the Exchange, and regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs. ETNs, CEFs, certain common stocks and certain REITs) with other markets or other entities that are members of the Intermarket Surveillance Group ("ISG"),[37] and FINRA and regulatory staff of the Exchange may obtain trading information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs. ETNs, CEFs, certain common stocks and certain REITs) from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs. ETNs, CEFs, certain common stocks and certain REITs) from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

(6) Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. The Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(7) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[38] as provided by NYSE Arca Equities Rule 5.3.

(8) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

(9) While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

(10) Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(11) Under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries.

(12) The Fund may not invest more than 30% of its total assets in securities denominated in non-U.S. Dollars, but this limitation will not apply to securities of non-U.S. issuers that are denominated in U.S. Dollars.

(13) The Fund may not invest more than 40% of its net assets in Debt Instruments rated below investment grade (also known as "junk bonds").

(14) The Fund will not invest more than 50% of its net assets in securities of issuers in emerging markets, which could consist of DRs, dollar-denominated foreign securities or non-U.S. dollar denominated foreign securities.

(15) Investments in non-agency mortgage and asset backed securities will be limited to 20% of the Fund's total assets in the aggregate.

(16) The Fund may not invest more than 50% of the Fund's principal investments in the securities of issuers in emerging markets.

(17) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, in accordance with Commission staff guidance.

(18) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based

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[36] The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, *e.g.,* Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF of the SSgA Active Trust, available at: *http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf.* In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

[37] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[38] 17 CFR 240.10A–3.

securities benchmark index (as defined in Form N–1A).

This approval order is based on all of the Exchange's representations, including those set forth above and in the Amendment No. 1. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–14 and should be submitted on or before May 4, 2016.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of Amendment No. 1 in the **Federal Register**. The additional information in Amendment No. 1, among other things, helped the Commission to evaluate the Shares' susceptibility to manipulation and the Exchange's ability to investigate possible manipulative activity. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[39]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[40] that the proposed rule change (SR–NYSEArca–2016–14), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08422 Filed 4–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77552; File No. SR–NASDAQ–2016–053]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 7015(g)(1) and 7034

April 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 2016, The NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Access Services fees at Rule 7015(g)(1) to reduce the fee assessed for MITCH Wave Ports located at Mahwah, NJ. The Exchange is also proposing to amend Rule 7034 to: (i) Reduce monthly fees assessed for NYSE Equities market data connectivity; and (ii) make technical changes to the description of market data connectivity options under the rule. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 1, 2016.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reduce certain fees under Rules 7015 and 7034, and to make technical changes to the description of market data connectivity options under Rule 7034.

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[39] 15 U.S.C. 78s(b)(2).

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the substance of this filing is identical to the substance of SR–NASDAQ–2016–047, which was filed March 29, 2016, and withdrawn on April 6, 2016. This filing replaced SR–NASDAQ–2016–047, thus, the fee changes were effective upon filing but have been operative since April 1, 2016.

Rule 7015 Changes

The Exchange is proposing to reduce the fee assessed for MITCH Wave Port at Mahwah, NJ monthly subscriptions. The Exchange provides Multi-cast ITCH ("MITCH") Wave Ports to clients co-located at other third-party data centers, including the New York Stock Exchange's ("NYSE") data center located in Mahwah, NJ, through which the Exchange's TotalView ITCH market data is distributed after delivery to those data centers via a wireless network.

The wirelessly-delivered TotalView ITCH market data arrives at Exchange-owned cabinets located at these third-party data centers, to which the co-location clients may cross-connect to the MITCH Wave Ports in those data centers to receive TotalView ITCH.[4] The wireless network that the Exchange uses to connect its data center with third-party data centers is provided and maintained by third-party vendors.

The Exchange incurs costs in leasing towers and equipment to connect to third-party data centers, such as Mahwah, NJ, through its third party vendors and the Exchange recoups these costs through the fees it assesses. The Exchange has recently reduced such vendor cost for connectivity to Mahwah, NJ by switching to an alternative vendor that assesses the Exchange a lower fee for such connectivity and is accordingly proposing to reduce the monthly charge assessed to subscribers for a MITCH Wave Port at Mahwah, NJ from $12,500 per month to $10,000 per month.

Rule 7034 Changes

The Exchange is proposing to amend Rule 7034 to: (i) Reduce monthly fees assessed for NYSE Equities market data connectivity; and (ii) make technical changes to the description of market data connectivity options under the rule. Rule 7034 provides the charges assessed by the Exchange for co-location services. Rule 7034(b) provides the various connectivity options for co-location services. The Exchange offers multicast Market Data feeds that are delivered to the Exchange's data center located in Carteret, NJ via a wireless network.[5] The Exchange offers connectivity to data feeds provided by NYSE, BATS (including Direct Edge), and CME, which are delivered wirelessly by third party vendors from those market's [sic] data centers to the Exchange's Carteret, NJ data center. Specifically, the NYSE Equities data feeds under Rule 7034(b) are wirelessly delivered to Carteret, NJ from NYSE's Mahwah, NJ data center, the BATS and Direct Edge data feeds are wirelessly delivered to Carteret, NJ from BATS's Secaucus, NJ data center, and the CME data feeds are wirelessly delivered to Carteret, NJ from CME's Aurora, IL data center.

The first change the Exchange proposes is to reduce the recurring monthly fee assessed for connectivity to NYSE Equities data feeds, which are transmitted from the Mahwah, NJ data center to the Exchange's data center in Carteret, NJ. As discussed above, the Exchange recently reduced its vendor costs by switching to an alternative vendor that assesses the Exchange a lower fee for such connectivity. Because of the reduced vendor costs realized for connectivity to Mahwah, NJ, the Exchange is able to reduce the charges assessed for services that require wireless connectivity to Mahwah, NJ.

Currently, the Exchange assesses a recurring monthly fee of $12,500 for connectivity to NYSE Equities Arca Integrated feed and the for the NYSE Equities Open Book feed. As a consequence of the reduced vendor costs, the Exchange is proposing to reduce the charge it assesses as a recurring monthly fee for each of these services from $12,500 to $10,000.

The second change the Exchange proposes is to make technical corrections to the rule text under Rule 7034(b) concerning NYSE Equities Open Book connectivity and BATS Multicast PITCH connectivity. NYSE recently combined Open Book data with NYSE BBO, NYSE Trades, and NYSE Order Imbalances data to form the "NYSE Integrated" data feed,[6] which the Exchange began to offer on November 16, 2015. Accordingly, the Exchange is [sic] updated the rule text under Rule 7034(b) to accurately reflect this change.

The Exchange is also correcting rule text concerning BATS Multicast PITCH connectivity that was inadvertently introduced when the rule text was adopted.[7] Specifically, the Exchange is correcting the spelling of "Multicast" in the rule and is correcting the name of the BATS BZX exchange, which is currently spelled "BZY."[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[11] Likewise, in *NetCoalition* v. *Securities and Exchange Commission*[12] ("NetCoalition") the DC Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[13] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[14]

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[4] Subscription to MITCH Wave Ports is entirely optional. Co-location clients that opt to subscribe to MITCH Wave Ports will continue to be fee liable for the applicable market data fees as described in Rules 7019, 7023, and 7026.

[5] Subscription to the connectivity options under Rule 7034(b) is entirely optional. To receive a particular data feed, a participant must subscribe to the connectivity under Rule 7034(b) and also have a subscription to the data feed with the applicable exchange.

[6] *See* Securities Exchange Act Release No. 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR–NYSE–2015–57).

[7] *See* Securities Exchange Act Release No. 73562 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR–NASDAQ–2012–119)

[8] For a description of Bats Global Markets, Inc.'s exchanges, *see http://www.batstrading.com/about/.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) ("Regulation NMS Adopting Release").

[12] *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010).

[13] *See NetCoalition*, at 534.

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."[15]

Fee Reductions

The Exchange believes that proposed reduction in the monthly recurring fees assessed under Rules 7015 and 7034(b) are [sic] reasonable because they [sic] will allow the Exchange to align the fees assessed for the connectivity more closely with the costs incurred by the Exchange in offering the connectivity. As discussed above, the Exchange realized a reduction in its vendor costs. Vendors supply wireless connectivity from the Exchange's data center to the data centers of other markets. Vendor costs are not the only costs to the Exchange in offering such connectivity; however, the reduced vendor cost for wirelessly connecting to Mahwah, NJ has allowed the Exchange to reduce the monthly fee assessed for connectivity to Mahwah, NJ by $2,500.

The Exchange notes that the proposed reduced monthly recurring fees are also reasonable because they are in-line with other fees assessed for similar connectivity, with differences in cost being reflective of the differences in the relative cost of offering the services. For example, the proposed reduced fees assessed under Rule 7034(b) for connectivity to the NYSE Equities feeds, although higher as reflection of the increased costs the Exchange incurs in offering the connectivity, are consistent with BATS Multicast PITCH BZX and BYX data feed connectivity under Rule 7034(b), which has a monthly recurring fee of $7,500. With respect to the costs incurred, the Exchange notes that the distance, and hence the wireless network equipment required, is greater between Mahwah, NJ and Carteret, NJ in contrast to the distance between Secaucus, NJ and Carteret, NJ, which is reflected in the fees that vendors charge the Exchange for such connectivity.

The Exchange believes that the proposed reduced fees are an equitable allocation and are not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated co-location clients that voluntarily select these service options. The Exchange also notes that co-location clients will continue to have other connectivity options to receive the underlying data feeds, including fiber optic connectivity.

Fee Clarifications

The Exchange believes that the proposed clarifying changes to Rule 7034(b) serve to protect investors and the public interest because they remove misspelled and inaccurate rule text, which will serve to avoid investor confusion, and will not alter what is currently provided under the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the charges assessed co-location clients for wireless connectivity do not impose a burden on competition because the Exchange is reducing the monthly fees assessed for such connectivity as a reflection of the Exchange's reduced vendor costs. Such a proposal is reflective of healthy competition among markets and may promote other exchanges to likewise reduce their costs and/or reduce the fees that they assess for similar connectivity.

Although the Exchange does not believe that the proposed changes will be unattractive to market participants, if they were it is likely that the Exchange will lose subscribers as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–053 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–053, and should be submitted on or before May 4, 2016.

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[14] *Id.* at 537.

[15] *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08425 Filed 4–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77550; File No. SR–FINRA–2015–029]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions), as Modified by Partial Amendment No. 1 and Partial Amendment No. 2, in the Consolidated FINRA Rulebook

April 7, 2016

I. Introduction

On July 31, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new, consolidated rule addressing accounts opened or established by associated persons of members at firms other than the firm with which they are associated.

The proposed rule change was published for comment in the **Federal Register** on August 14, 2015.[3] The comment period closed on September 4, 2015. On September 22, 2015, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 12, 2015. The Commission received four comment letters in response to the Notice.[4] On November 10, 2015, FINRA responded to the comments and filed Partial Amendment No. 1 to the current proposal.[5] On November 12, 2015, the Commission issued an order instituting proceedings pursuant to Exchange Act section 19(b)(2)(B)[6] to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.[7] The Commission received one (1) comment letter in response to the Order Instituting Proceedings.[8] On February 10, 2016, the Commission published a notice extending the time period in which the Commission must determine whether to approve or disapprove the proposed rule change to April 8, 2016.[9] On March 2, 2016, FINRA responded to the comment letter received in response to the Order Instituting Proceedings and filed Partial Amendment No. 2.[10]

This order approves the proposed rule change, as modified by Partial Amendment No. 1 and Partial Amendment No. 2 (collectively, the "Amendments").[11]

II. Description of the Proposed Rule Change[12]

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[13] FINRA is proposing to adopt new FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook, and to delete NASD Rule 3050, Incorporated New York Stock Exchange ("NYSE") Rules 407 and 407A, and Incorporated NYSE Rule Interpretations 407/01 and 407/02.[14]

A. Current NASD Rule 3050

Current NASD Rule 3050 provides a means to inform member firms about transactions effected by their associated persons in accounts established outside the firm. This information gives members an opportunity to weigh the effect these accounts may have on the firm and its customers.[15] The rule imposes specified obligations on member firms and associated persons, including:

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Rel. No. 75655 (Aug. 10, 2015), 80 FR 48941 (Aug. 14, 2015) (File No. SR–FINRA–2015–029) ("Notice").

[4] *See* Letters from Eric Arnold and Clifford Kirsch, Sutherland Asbill & Brennan LLP (for the Committee of Annuity Insurers), dated September 4, 2015 ("Sutherland Letter"); Michael J. Hogan, President and Chief Executive Officer, FOLIO*fn* Investments, Inc., dated September 4, 2015 ("FOLIO*fn* Letter"); Joseph C. Peiffer, President, Public Investors Arbitration Bar Association ("PIABA"), dated September 3, 2015 ("PIABA Letter"); and Kevin Zambrowicz, Associate General Counsel & Managing Director, and Stephen Vogt, Assistant Vice President & Assistant General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated September 3, 2015 ("SIFMA Letter"). Comment letters are available at *www.sec.gov.* The Commission discussed these comments in the Order Instituting Proceedings. *See infra* note 7.

[5] *See* Letter from Patrice Gliniecki, Senior Vice President and Deputy General Counsel, FINRA, to the Commission, dated November 10, 2015 ("FINRA Response Letter"). The FINRA Response Letter and the text of Partial Amendment No. 1 are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, at the Commission's Web site at *http://www.sec.gov/rules/sro/finra/2015/34-75655.pdf,* and at the Commission's Public Reference Room.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Exchange Act Release No. 76430 (Nov. 12, 2015), 80 FR 72118 (Nov. 18, 2015) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions), as Modified by Partial Amendment No. 1) ("Order Instituting Proceedings")). The comment period closed on December 9, 2015.

[8] *See* Letter from Laura Crosby-Brown, dated November 13, 2015 ("Crosby-Brown Letter").

[9] *See* Exchange Act Release No. 77103 (Feb. 10, 2016), 81 FR 8109 (Feb. 17, 2016) (Notice of Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions), as Modified by Partial Amendment No. 1, in the Consolidated FINRA Rulebook).

[10] *See* Letter from Patrice Gliniecki, Senior Vice President and Deputy General Counsel, FINRA, to the Commission, dated March 2, 2016 ("FINRA's Second Letter"). FINRA's Second Letter and the text of Partial Amendment No. 2 are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

[11] The text of the proposed rule changes is available at the principal office of FINRA, on FINRA's Web site at *http://www.finra.org,* and at the Commission's Public Reference Room. In addition, you may also find a more detailed description of the original proposed rule change, as amended by Amendment No. 1, in the Notice, and Order Instituting Proceedings.

[12] The proposed rule change, as described in this Item II, is excerpted, in part, from the Notice, which was substantially prepared by FINRA. *See* Notice.

[13] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules"). *See id.*

[14] For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

[15] *See* Exchange Act Release No. 4924 (Aug. 21, 1953).

- *Obligations of Member Firms:* NASD Rule 3050(a) requires that a member (called an "executing member") that knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another member (called an "employer member"), or for any account over which the associated person has discretionary authority, must use reasonable diligence to determine that the execution of the transaction will not adversely affect the interests of the employer member. NASD Rule 3050(b) requires that, when an executing member knows that a person associated with an employer member has or will have a financial interest in, or discretionary authority over, any existing or proposed account carried by the executing member, the executing member must:

(1) Notify the employer member in writing, prior to the execution of a transaction for the account, of the executing member's intention to open or maintain that account;

(2) upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to the account; and

(3) notify the person associated with the employer member of the executing member's intention to provide the notice and information required by (1) and (2), above.

- *Obligations of Associated Persons:* Associated persons who: (1) Open securities accounts or place securities orders through (a) a member firm other than their employer, or (b) other financial institution that is not a FINRA member, and (2) have a financial interest in, or discretionary authority over, such accounts or orders[16] must comply with the following:

(1) NASD Rule 3050(c) requires that a person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, must notify both the employer member and the executing member, in writing, of his or her association with the other member. The rule also provides that if the account was established prior to the person's association with the employer member, the person must notify both members in writing promptly after becoming associated; and

(2) NASD Rule 3050(d) provides that if the associated person opens a securities account or places an order for the purchase or sale of securities with a broker-dealer that is registered pursuant to Exchange Act section 15(b)(11) (a notice-registered broker-dealer), a domestic or foreign investment adviser, bank, or other financial institution (*i.e.,* firms that are not FINRA members), then he or she must: (i) Notify his or her employer member in writing, prior to the execution of any initial transactions, of the intention to open the account or place the order; and (ii) upon written request by the employer member, request in writing and assure that the notice-registered broker-dealer, investment adviser, bank, or other financial institution provides the employer member with duplicate copies of confirmations, statements, or other information concerning the account or order. NASD Rule 3050(d) also provides that if an account subject to Rule 3050(d) was established prior to the person's association with the member, the person must comply with the rule promptly after becoming associated.

In addition, NASD Rule 3050(f) provides that the requirements of Rule 3050 do not apply to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940 ("Investment Company Act"), or to accounts which are limited to transactions in such securities.

B. Current NYSE Rules 407 and 407A

The purpose of NYSE Rule 407 is similar to the purpose of FINRA Rule 3050—to provide member firms information about transactions effected by their associated persons in accounts established outside their firm. According to FINRA, the NYSE and NASD rules are similar with some variations, including:

- NYSE Rule 407(a) is similar to NASD Rule 3050(b), except that Rule 407(a) requires that an executing member receive an employer member's prior written consent before: (1) Opening a securities or commodities account, or (2) executing any transaction in which a member or employee associated with another member or member organization is directly or indirectly interested. The rule also requires that duplicate confirmations and account statements be sent promptly to the employer.
- NYSE Rule 407(b) is similar to NASD Rules 3050(c) and (d), except that Rule 407(b) generally requires that associated persons who: (1) Establish or maintain a securities or commodities account, or enter into a securities transaction at (a) another member firm, or (b) a domestic or foreign non-member broker-dealer, investment adviser, bank, or other financial institution,[17] and (2) have a financial interest in, or discretionary authority over, such accounts or transactions must obtain the employer firm's prior written consent. The rule also requires that persons having accounts or effecting transactions as covered by the rule must arrange for duplicate confirmations and statements (or their equivalents) to be sent to the employer firm. The rule further requires that all such accounts and transactions must periodically be reviewed by the employer member.
- NYSE Rule 407.12 is similar to NASD Rule 3050(f), except that Rule 407.12 excepts the specified transactions and accounts (*i.e.,* transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, or to accounts which are limited to transactions in such securities, or to monthly investment plan type accounts) only from the obligation to send duplicate confirmations and statements unless requested by the employer.

In addition, NYSE Rule 407A (Disclosure of All Member Accounts) requires members to promptly report to the NYSE any securities account (including accounts at a member or non-member broker-dealer, investment adviser, bank or other financial institution), in which the member has a financial interest or the power to make investment decisions. NYSE Rule 407A also requires a member having such an account to notify the financial institution that carries or services the account that it is a member of the NYSE. In addition, the rule requires that members report to the NYSE when any such securities account is closed. FINRA states that "[t]hese reporting requirements were designed to provide the NYSE with current information about where floor members carry securities accounts."[18]

NYSE Rule Interpretation 407/01 addresses the process for determining whether the account of a spouse of an associated person should be subject to NYSE Rule 407.

NYSE Rule Interpretation 407/02 provides that NYSE Rule 407(b) applies when an associated person is also a majority stockholder of a non-public corporation that wishes to open a discretionary margin account at another member.

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[16] *See* NASD Rule 3050(e).

[17] NYSE Rule 407.13 states that, for purposes of the rule, the term "other financial institution" includes, but is not limited to, insurance companies, trust companies, credit unions, and investment companies.

[18] *See* Notice.

C. Proposed New FINRA Rule 3210, as Amended by Partial Amendment No. 1 [19]

Proposed FINRA Rule 3210(a) would require an associated person to obtain his or her employer firm's prior written consent before opening or otherwise establishing an account in which securities transactions can be effected and in which the associated person has a beneficial interest at a member other than the employer member (*i.e.*, executing member), or at any other financial institution.[20] Proposed FINRA Rule 3210.02, as amended by Partial Amendment No. 1, would establish a rebuttable presumption that an associated person has a beneficial interest in an account held by an individual listed in proposed Rule 3210.02(a)–(d). Specifically, under the proposal, an associated person would be presumed (not deemed) to have a beneficial interest in any account that is held by: (a) The spouse of the associated person, provided that the spouse resides in the same household as the associated person; [21] (b) a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person; (c) any other related individual over whose account the associated person has control; or (d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes. Moreover, proposed FINRA 3210.02, as amended by Partial Amendment No. 1, would allow an associated person to overcome the presumption of beneficial interest in an account by "[demonstrating], to the satisfaction of the employer member, that the associated person derives no economic benefit from the account." [22] Notably, the proposal would also "[eliminate] the language in the current rules that references accounts or transactions where the associated person has 'the power, directly or indirectly, to make investment decisions,' as set forth in NYSE Rule 407(b), and accounts where the associated person has 'discretionary authority,' as set forth in NASD Rule 3050(b)." [23]

Proposed FINRA Rule 3210(b) would require an associated person to provide written notice to the executing member, or other financial institution, of his or her association with the employer member prior to opening or otherwise establishing an account subject to the rule.

Proposed FINRA Rule 3210(c) would require an executing member, upon written request by the employer member, to transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to the rule.

Proposed FINRA Rule 3210.01 would require an associated person to obtain the written consent of the employer member, within 30 calendar days of becoming so associated, to maintain an account that was opened or otherwise established prior to the person's association with the employer member. The proposed rule also would require the associated person to notify in writing the executing member or other financial institution of his or her association with the employer member.

Proposed FINRA Rule 3210.03, as amended by Amendment No. 1, would exclude from the requirements of FINRA Rule 3210 transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D–12, qualified tuition programs pursuant to section 529 of the Internal Revenue Code, and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to monthly investment plan type accounts.[24]

Proposed FINRA Rule 3210.04 would require an employer member to consider the extent to which it would be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an associated person to open or maintain an account subject to the rule at a financial institution other than a member.

D. Partial Amendment No. 2

FINRA subsequently amended Supplementary Material .02 ("Beneficial Interests" [25]) to proposed Rule 3210, as amended by Partial Amendment No. 1, by:

- Adding the phrase "and to have established" in the first sentence of Supplementary Material .02 to clarify that the associated person would not only be presumed to have a beneficial interest in the accounts specified in Supplementary Material .02(a) through .02(d), but also that the accounts would be presumed to be established by the associated person. FINRA believes this language will clarify that these accounts are covered within the meaning of the phrase "open or otherwise establish" as used in proposed Rule 3210(a); [26]
- Revising the last sentence of Supplementary Material .02 to read: "For purposes of paragraphs (a) and (b) of this Supplementary Material .02, an associated person need not be presumed to have a beneficial interest in, or to have established, an account if the associated person demonstrates, to the reasonable satisfaction of the employer member, that the associated person derives no economic benefit from, and exercises no control over, the account." FINRA believes that adding "For purposes of paragraphs (a) and (b) of this Supplementary Material .02" is an appropriate clarification, given that the accounts specified in paragraphs (c) and (d) under the Supplementary Material involve control by the associated person, and therefore "there would be no meaningful purpose in attempting to rebut the presumption" of beneficial interest for accounts controlled by the associated person. FINRA also believes that adding the phrase "reasonable satisfaction of the employer member" would clarify that FINRA expects an employer member's determination that the associated person has rebutted the presumption to be reasonable. Moreover, FINRA believes that including the phrase "and exercises no control over" would clarify that the associated person would need to

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[19] The description in this section describes the proposed rule change prior to Partial Amendment No. 2, which is described in section D below.

[20] Based on NYSE Rule 407.13 and NASD Rule 3050(d), proposed FINRA Rule 3210.05 provides that the terms "other financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to Exchange Act Section 15(b)(11), domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union, and investment company.

[21] As originally proposed, proposed Rule 3210.02 would have deemed an associated person to have a beneficial interest in any account held by a spouse, regardless of residence.

[22] As originally proposed, proposed Rule 3210.02 would have deemed (not presumed) an associated person to have a beneficial interest in any account that is held by an individual listed in Rule 3210.02(a)–(d) for purposes of Rule 3210.

[23] *See* Notice.

[24] As originally proposed, proposed Rule 3210 would have exempted transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D–12, qualified tuition programs pursuant to section 529 of the Internal Revenue Code, and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or accounts that are limited to transactions in such securities, or monthly investment plan type accounts from only subpart (c) of Rule 3210 (discussed above).

[25] FINRA also proposes revising the header for Supplementary Material .02 to read "Related and Other Persons," in order to more accurately reflect the content identified in subparts (a) through (d). *See* FINRA's Second Letter.

[26] *See* FINRA's Second Letter.

demonstrate not only that he or she derives no economic interest from the account, but also that he or she is not exercising any trading authority.[27]

- Deleting the phrase "provided that the spouse resides in the same household as the associated person." In so doing, an associated person would be presumed to have a beneficial interest in, and to have established, the account of a spouse, without regard to whether the spouse resides with the associated person. In support of this amendment, FINRA notes that the proposed amendment is consistent with existing FINRA Rule 3110(d)(4)(A)(i).[28] FINRA also believes that presuming an associated person has a beneficial interest in a spouse's account, regardless of residency, would help ensure the appropriate regulatory oversight of accounts that associated persons could misuse.[29] In addition, FINRA believes that the proposed rebuttable presumption would "afford adequate flexibility for employer members to exclude accounts that pose little or no supervisory risk."[30] FINRA recognizes that the requirement to rebut this presumption may create a new obligation for associated persons.[31] On balance, however, FINRA believes that the potential costs to associated persons are outweighed by the aforementioned regulatory benefits.[32]

III. Description of Comments on the Proposal as Amended by Partial Amendment No. 1

As noted above, the Commission received one (1) comment letter in response to the Order Instituting Proceedings.[33] The commenter argued that certain broker-dealers do not engage in businesses that could lead to the types of violations that the proposed new rules are designed to help prevent. Accordingly, the commenter encouraged FINRA to amend the proposal to "allow firms to decide based on their business model and potential risks whether or not to require the approval of outside accounts and whether the firm must receive statements or transition reports."[34]

In response to this commenter, FINRA cited "the core supervisory objective that gives rise to the need for the rulemaking . . . discussed in the original filing and in the Partial Amendment No. 1."[35] FINRA further stated that "sound supervisory practices require that a member firm monitor personal accounts opened or established outside of the firm by its associated persons."[36] FINRA also stated that it believes the proposed rule would "help facilitate effective oversight of the specified trading activities of associated persons of member"[37] by, among other things, "provid[ing] employer members reasonable flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities."[38] Accordingly, FINRA declined to make the suggested changes.

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comments received, and FINRA's responses to the comments and proposed Amendments. Based on its review of the record, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[39] In particular, the Commission finds that the proposal is consistent with Exchange Act section 15A(b)(6), which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[40]

As stated above, the proposal would update and consolidate into the FINRA Rulebook NASD and NYSE rules that each govern a broker-dealer's oversight of accounts established by their associated persons at other broker-dealers and other financial institutions. As discussed above, the proposed rule would, among other things: (1) Provide an associated person with the opportunity to rebut a presumption that he or she has a beneficial interest in an account established by certain related and other persons; (2) require an associated person to obtain his or her employer firm's prior written consent before opening or otherwise establishing an account in which securities transactions can be effected and in which the associated person has a beneficial interest at a member other than the employer member, or at any other financial institution; (3) require an associated person to provide written notice to the executing member, or other financial institution, of his or her association with the employer member prior to opening or otherwise establishing an account subject to the rule; and (4) require an executing member, upon written request by the employer member, to transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to the rule.

As stated in the Notice, FINRA designed the proposed rule change to help "facilitate the supervision of the trading activities of associated persons within the framework of FINRA's . . . supervisory rules."[41] More specifically, FINRA believes the proposed rule change would "help members ensure that such activities, engaged in at executing members or other financial institutions, do not violate provisions of the [Exchange] Act, its regulations, or FINRA rules, thereby helping to ensure orderly markets."[42]

The Commission recognizes one commenter's concern that not requiring a member firm to obtain a duplicate account statement that reflects every associated person's covered transactions unless the account statement is requested in writing might negatively affect a broker-dealer's ability to monitor, and thus, supervise trading by its associated persons.[43] The Commission also recognizes, however, that FINRA believes the proposal would create sufficient flexibility for members to "craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities"[44] and that requiring delivery of duplicate account statements would eliminate this flexibility. More importantly, FINRA Rule 3110 regarding broker-dealer supervision establishes the obligation for a member to include in its supervisory procedures a process for the review of securities transactions that are/is reasonably designed to identify trades that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive practices that are effected for, among other things, covered accounts.

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[27] *See* FINRA's Second Letter. FINRA also believes that permitting an associated person to rebut a presumption of beneficial interest in a spouse's account gives employer members flexibility to consider diverse familial circumstances, such as separation. *See* FINRA's Second Letter; *see also* SIFMA Letter (stating that "[i]t is not uncommon for spouses to maintain completely separate financial lives.").

[28] *See* FINRA's Second Letter. As stated in FINRA Rule 3110(d)(1)(D), "Each member shall include in its supervisory procedures a process for the review of securities transactions that are reasonably designed to identify trades that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive device that are effected for the . . . covered accounts." "Covered accounts" are later defined as including "any account introduced or carried by the member that is held by . . . the spouse of a person associated with the member." FINRA Rule 3110(d)(4)(A)(i).

[29] *See* FINRA's Second Letter; *but see* FINRA Response Letter (stating that it is aware of "the potential difficulties that could arise with respect to spouse accounts as proposed in the original filing.").

[30] *See* FINRA Response letter.

[31] *See* FINRA's Second Letter.

[32] *Id.*

[33] *See* Crosby-Brown Letter.

[34] *Id.*

[35] *See* FINRA's Second Letter.

[36] *See* Notice; *see also* FINRA Response Letter.

[37] *Id.*

[38] *See* FINRA Response Letter; *see also* Notice.

[39] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78o–3(b)(6).

[41] *See* Notice; *see also* FINRA Response Letter.

[42] *See* Notice; *see also* FINRA Response Letter.

[43] *See* PIABA Letter; *also see* Notice and Order Instituting Proceedings.

In consolidating the overlapping rules, FINRA proposed deleting certain provisions[45] and amending other provisions. In particular, the proposed rule change would amend the definition of "beneficial interest" to create a rebuttable presumption that an associated person holds a beneficial interest in the financial accounts of certain related and other persons. The Commission recognizes commenters' concerns that, as a result of this change, an associated person may not always be able to obtain a spouse's duplicate account statements. Specifically, the two commenters argued that family arrangements are diverse, and that an associated person could have difficulty complying with the rule in the event of pending separation or divorce from a spouse.[46] One of the commenters also suggested that these concerns could extend, for example, to the accounts of a child of an associated person's spouse.[47] However, we believe that FINRA's proposal strikes an appropriate balance between the regulatory interests in facilitating adequate supervision over accounts in which the associated person has a beneficial interest, and the possibility that an associated person may not be able to obtain duplicate account statements in certain limited circumstances.

Another commenter argued that additional types of transactions and accounts should be excluded from the obligations of the proposed rule, asserting that they pose limited risks with respect to the need to oversee associated persons' accounts.[48] This commenter recommended that FINRA exempt transactions in "all insurance contracts that are securities" from the obligation to provide the employer member with duplicate account documents.[49] Although FINRA declined to except insurance products from the rule's requirements, it agreed to "consider whether further exceptions are appropriate based on the attributes of specific insurance products."[50]

In sum, the Commission believes that the proposal would help protect investors and the public interest by establishing a framework through which a member can adequately supervise securities-related activities of their associated persons at firms other than the one with which they are associated.[51] We also believe this rule makes the core supervisory obligation more operationally workable for employer firms.

In addition, the proposal enables members to design a supervisory system that suits their respective business model and risk profiles. In this regard, the proposal would allow firms to decide, based on their respective business model and potential risks, whether to approve outside accounts and whether the firm wants to receive duplicate account statements and other related account documents. For example, FINRA states that members could impose obligations on their associated persons beyond those required by the proposal, such as "tak[ing] a more expansive view of the accounts the associated person should disclose than is otherwise required by the [proposed] rule."[52]

The Commission believes that FINRA gave due consideration to the proposal and met the requirements of the Exchange Act. For these reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered pursuant to Exchange Act section 19(b)(2)[53] that the proposal (SR–FINRA–2015–029), as modified by the Amendments, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08423 Filed 4–12–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77554; File No. SR–CBOE–2016–023]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

April 7, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt the Frequent Trader Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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[44] *See* FINRA Response Letter; *also see* Notice and Order Instituting Proceedings.

[45] For example, the proposed rule would not include existing NASD rules that affect accounts over which associated persons make investment decisions or have discretionary authority to the proposed new rule. FINRA believes that the activities in these types of accounts involve private securities transactions subject to FINRA Rule 3280, making application of the proposed new rule redundant. *See* Notice and FINRA's Response Letter.

[46] *See* SIFMA Letter; FOLIO*fn* Letter.

[47] *See* FOLIO*fn* Letter.

[48] *See* Sutherland Letter.

[49] *Id.*

[50] *See* FINRA Response Letter; *see also* Order Instituting Proceedings.

[51] FINRA Rule 3110(d) (Transaction Review and Investigation) requires that a member's supervisory procedures include a process for reviewing securities transactions effected in, among others, accounts of their associated persons, reasonably designed to identify trades that may violate the provisions of the Exchange Act, its regulations, or FINRA rules prohibiting insider trading and manipulative and deceptive devices. *See* FINRA Response Letter.

[52] *See* FINRA Response Letter; *see also* FINRA Response Letter (stating that "the rule [does not] limit the employer member's discretion to set requirements with respect to the holding of outside accounts"); *see also* FINRA Response Letter (stating that "the rule does not prevent employer members from crafting policies and procedures that require associated persons to disclose the types of transactions and accounts specified under [proposed FINRA Rule 3210.03] and to provide related information").

Similarly, FINRA notes that "the rule does not limit the discretion of executing members to craft policies and procedures with respect to the account activity of persons associated with other firms." *See* FINRA Response Letter.

[53] 15 U.S.C. 78s(b)(2).

[54] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective April 1, 2016. Specifically, the Exchange proposes to adopt a program that offers transaction fee rebates to Customers (origin code "C") that meet certain volume thresholds in CBOE VIX Volatility Index options ("VIX options") and S&P 500 Index options ("SPX"), weekly S&P 500 options ("SPXW") and p.m.-settled SPX Index options ("SPXpm") (collectively referred to as "SPX options") provided the Customer registers for the program (the "Frequent Trader Program" or "Program"). A Customer for purposes of this program would be any non-Trading Permit Holder, non-broker dealer non-Professional.

To participate in the Frequent Trader Program, Customers would have to register with the Exchange at the Frequent Trader Web site by providing certain information such as their name and contact information. Once registered, the Customer would be provided a unique identification number ("FTID") that can be affixed to each of its orders.[3] The FTID allows the Exchange to identify and aggregate all electronic and manual trades during both the Regular Trading Hours and Extended Trading Hours sessions from that Customer for purposes of determining whether the Customer meets any of the various volume thresholds. The Customer would have to provide its FTID to the Trading Permit Holder ("TPH") submitting that Customer's order to the Exchange ("executing agent" or "executing TPH") and that executing TPH would have to enter the Customer's FTID on each of that Customer's orders. The Exchange notes that it would be the responsibility of the Customer to request that the executing TPH affix its FTID to its order(s), but that it would be voluntarily for the executing TPH to do so. The Exchange would then aggregate the Customer's volume (for which their FTID was entered) on a monthly basis for each of VIX and SPX options. If the Customer meets the thresholds shown below, it would receive a rebate on its VIX and/or SPX options transaction fees, respectively, as indicated below.[4] The Exchange notes that although all executed contracts with an FTID will count towards the qualifying volume thresholds, the rebates will be based on the actual amount of fees assessed in accordance with the Fees Schedule (*e.g.*, if a Customer submits a VIX order for 30,000 contracts, pursuant to the current Fees Schedule, that customer would be assessed fees for only the first 15,000 contracts under the Customer Large Trade Discount Program. Therefore, while all 30,000 contracts would count when determining the tier, the customer's rebate would be based on the amount of the fees assessed for 15,000 contracts, not on the value of the total 30,000 contracts executed). The thresholds and rebates are as follows:

VIX			SPX, SPXW, SPXpm		
Tier	Monthly VIX contracts traded	VIX fee rebate (percent)	Tier	Monthly SPX, SPXW, SPXpm contracts traded	SPX, SPXW, SPXpm fee rebate (percent)
1	5,000–9,9999	5	1	12,000–19,999	5
2	10,000–19,999	10	2	20,000–49,999	10
3	20,000 and above	15	3	50,000 and above	15

The Exchange notes that the highest achieved threshold rebate rate will apply from the first executed contract (*e.g.*, if a Customer executes 14,000 VIX contracts in a month, the Tier 2 10% rebate rate would apply to all 14,000 VIX contracts). The Exchange believes the tiered program incentivizes the sending of Customer orders to the Exchange while maintaining an incremental incentive for Customer's to strive for the highest tier level. The Exchange also notes that the volume thresholds for SPX options is higher than for VIX in light of its mature and established position in the industry.

Lastly, the Exchange proposes to provide that it will distribute a customer's rebate pursuant to the customer's instructions, which may include receiving the rebate as a direct payment or via a distribution to one or more of its executing Clearing Trading Permit Holders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,[7] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders.

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[3] The Exchange notes that it will not disclose the list or details of customers who have a FTID to any party, and there will be no public record of FTID owners. Any personal information provided to the Exchange in connection with the Frequent Trader Program will be handled in a manner consistent with the Frequent Trader Program Privacy Policy, a copy of which can be accessed through the Frequent Trader Program Web site at *https://www.cboe.com/ftid/registration.aspx.*

[4] The Exchange notes that only transaction fees would be discounted (*i.e.*, no other surcharges, such as the Customer Priority Surcharges, would be rebated or discounted).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

The adoption of the Frequent Trader Program is reasonable because it will allow Customers who register for the program an opportunity to receive certain rebates for reaching certain trading volume thresholds. The Exchange notes that it is voluntary for Customers to choose whether or not to register for the program and whether to request that their unique FTID be appended to their orders. The Program is also voluntary for executing TPHs who have the option of choosing not to participate (*i.e.*, they may decline to append FTID numbers on Customer orders). Additionally, the Exchange notes that incentive programs based on Customer volume already exist elsewhere within the industry.[8]

The Exchange believes it's equitable and not unfairly discriminatory to establish the program for Customers only because this is designed to attract a greater number of customer VIX and SPX orders. This increased volume creates greater trading opportunities that benefit all market participants. Specifically, while only Customer orders qualify for the proposed rebates under the Frequent Trader Program, an increase in customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Moreover, the options industry has a long history of providing preferential pricing to Customers. In addition the Exchange believes the proposed program is equitable and not unfairly discriminatory because any Customer (that is not a CBOE TPH, broker-dealer or Professional) may avail itself of this program provided it registers with the Exchange.

The Exchange believes limiting the Program to VIX and SPX options is equitable and not unfairly discriminatory because the Exchange has expended considerable time and resources in developing these products. The Frequent Trader Program is designed to encourage greater customer VIX and SPX options trading, which, along with bringing greater VIX and SPX options trading opportunities to all market participants, would bring in more fees to the Exchange, and such fees can be used to recoup the Exchange's costs and expenditures from developing and maintaining VIX and SPX options. The Exchange believes it's equitable and not unfairly discriminatory to establish higher threshold tiers for the SPX product group because the SPX product group has reached a mature and established level while VIX has not.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to include all of a customer's VIX and SPX executed contracts with an FTID towards the respective qualifying thresholds because the Exchange wishes to support and encourage customers to provide greater order flow in these classes, which allows for price improvement and has a number of positive impacts on the market system. The Exchange also believes however, that it's reasonable, equitable and not unfairly discriminatory to base the rebate off the amount of transaction fees that would be assessed pursuant to the Fees Schedule (as opposed to being based off the "theoretical" fee value of all contracts executed) because the Exchange does not want to provide rebates on contracts for which it is not also collecting transaction fees.

Lastly, the Exchange believes it's reasonable, equitable and not unfairly discriminatory to provide Customers a choice as to how their payment is delivered. Providing Customers with the option of requesting to receive their rebates under the Frequent Trader Program as separate direct payments or via a distribution to one or more of its executing Clearing Trading Permit Holders will provide Customers with a convenient manner in which to receive their rebates, which perfects the mechanism for a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while the rebates apply only to Customers, the Program is designed to encourage increased Customer VIX and SPX options volume, which provides greater trading opportunities for all market participants. Additionally, there is a history in the options markets of providing preferential treatment to Customers. The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because VIX and SPX products are only traded on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–023, and should be submitted on or before May 4, 2016.

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[7] 15 U.S.C. 78f(b)(4).

[8] *See e.g.*, CBOE Fees Schedule, the Volume Incentive Program; and NASDAQ PHLX LLC Pricing Schedule, Section B. Customer Rebate Program.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08427 Filed 4–12–16; 8:45 am]

BILLING CODE 8011–01–P

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77553; File No. SR–CBOE–2016–009]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to LMMs and DPMs

April 7, 2016.

I. Introduction

On February 8, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to Lead Market-Makers ("LMMs"), Designated Primary Market-Makers ("DPMs") and Supplemental Market-Makers ("SMMs"). The proposed rule change was published for comment in the **Federal Register** on February 26, 2016.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change[4]

The Exchange proposes to (i) reorganize, simplify and make consistent certain text relating to LMM and DPM obligations generally, (ii) amend its Rules related to LMMs, (iii) delete outdated references in its Rules to SMMs and other obsolete language and (iv) make other clarifying changes.

Specifically, the Exchange proposes to make modifications to Rules 8.15 (pertaining to LMMs in Hybrid 3.0 classes), 8.15A (pertaining to LMMs in Hybrid classes) and 8.85 (pertaining to DPMs) to modify the descriptions of certain obligations of LMMs and DPMs (*e.g.,* obligations related to quote accuracy, bid/ask differentials, minimum size and trading rotations, competitive markets and promotion of the Exchange, and material operational or financial change notifications) to be more consistent with each other.[5] The Exchange notes that LMMs and DPMs have substantially similar functions and obligations (including the same continuous quoting obligations, along with the same participation entitlement percentages), and therefore, having consistent language with respect to these obligations will simplify its rules and reflect the similar roles served by LMMs and DPMs.[6]

Of significance, CBOE proposes to change the opening quoting obligations of LMMs and DPMs. CBOE Rules 8.15A(b)(iv) and 8.85(a)(xi) require LMMs and DPMs, respectively, to ensure that a trading rotation is initiated *promptly* following the opening of the underlying security in 100% of the series of each allocated class by entering opening quotes as necessary. The Exchange proposes to modify the opening quote requirement to require that opening quotes must be entered within *one minute* in any series that is not open due to the lack of a quote. The proposed rule change also modifies the Rules' language to provide that the timing of the opening quoting obligation begins after the initiation of an opening rotation on the Exchange rather than after the opening of the underlying security.[7]

CBOE also proposes to impose a continuous quoting obligation on LMMs in Hybrid 3.0 classes.[8] LLMs in Hybrid classes currently must provide continuous electronic quotes in the lesser of 99% of the non-adjusted option series or 100% of the non-adjusted option series minus one call-put pair, with the term "call-put pair" referring to one call and one put that cover the same underlying instrument and have the same expiration date and exercise price.[9] According to CBOE, its rules currently do not prescribe for LMMs a continuous electronic quoting requirement for Hybrid 3.0 classes, though CBOE has historically assumed a requirement of at least 90% of the series of each appointed class for 99% of the time.[10] CBOE now proposes to codify for LMMs a continuous quoting requirement for Hybrid 3.0 classes to be identical to the existing requirement for LMMs assigned to Hybrid classes.[11]

The Exchange also proposes modifications to Rules 8.15, 8.15A, 8.83 and 8.85 as they relate to the Off-Floor DPM and Off-/On-Floor LMM programs. For instance, CBOE proposes to amend Rule 8.83(g) to conform Hybrid 3.0 classes to Hybrid classes by providing that in a Hybrid 3.0 class in which an Off-Floor DPM has been appointed, the Exchange also would be permitted to appoint an On-Floor LMM, which would be eligible to receive a participation entitlement under current

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77200 (February 22, 2016), 81 FR 9910 ("Notice").

[4] A more detailed description of the proposed rule change appears in the Notice. *See* Notice, *supra* note 3.

[5] *See* Notice, *supra* note 3, at 9913.

[6] *See id.* Currently, the primary difference between LMMs and DPMs relates to their appointment terms. An LMM receives an appointment for a limited term (*e.g.,* one month), while a DPM serves in that role until it resigns or the Exchange removes it from that role pursuant to Rule 8.90.

[7] *See* Notice, *supra* note 3, at 9913.

[8] *See* Notice, *supra* note 3, at 9915.

[9] *See* CBOE Rule 8.15A(b)(i).

[10] *See* Notice, *supra* note 3, at 9915.

[11] *See id.* As proposed, this obligation would not apply to intra-day add-on series on the day during which such series are added for trading, and would apply to an LMM's appointed classes collectively. CBOE would determine compliance with an LMM's continuous electronic quoting obligation on a monthly basis (however, determining compliance with this obligation on a monthly basis would not relieve an LMM from meeting this obligation on a daily basis, nor would it prohibit the Exchange from taking disciplinary action against an LMM for failing to meet these obligations each trading day). Further, the proposed Rule would provide that when the underlying security for a class is in a limit up-limit down state, LMMs in Hybrid 3.0 classes would have no quoting obligations in the class. The Exchange represents that these obligations are identical to the obligations currently imposed on LMMs in Hybrid classes, as well as DPMs in Hybrid 3.0 classes. *See* Notice, *supra* note 3, at 9915.

Rule 8.15B with respect to orders represented in open outcry.[12]

CBOE also proposes that the Exchange have the discretion to appoint an On-Floor LMM in any class in which an Off-Floor LMM has been appointed, and that any such On-Floor LMM would be eligible to receive a participation entitlement under current Rule 8.15B with respect to orders represented in open outcry.[13] The Exchange also proposes to treat Off-Floor LMMs in a manner similar to the current treatment of Off-Floor DPMs with respect to their quoting requirement and appointments.

CBOE also proposes to make changes to eliminate obsolete references, including those related to individual LMMs, SMMs, an expired pilot program, the former Linkage Plan, and strike price interval, bid/ask differential and quote continuity requirements. Further, CBOE proposes to make non-substantive or technical modifications to Rules 1.1(fff) and (ggg), 3.2, 6.1A, 6.2A, 6.45A, 6.45B, 6.74, 8.7, 8.13, 8.14, 8.15, 8.15A, 8.83, 8.85, 17.50, 22.14, 24.9, and 29.17, including amendments to correct typographical errors, update headings, update cross-references to Rules 8.15, 8.15A and 8.15B, make the rule text more plain English, and make the rule text more consistently organized, numbered and worded.

III. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Commission believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Commission believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Commission believes that the proposed rule changes to amend Rules 8.15, 8.15A and 8.85 to revise descriptions of obligations of LMMs in Hybrid 3.0 classes, LMMs in Hybrid classes, and DPMs, respectively, as well as to combine the LMM obligations into a single rule for all classes, should benefit investors by providing more uniformity to the Rules related to market participants with substantially similar functions that are subject to analogous obligations. In addition, the Commission believes that CBOE's proposal to impose a continuous quoting obligation on LMMs in Hybrid 3.0 classes that mirrors the existing continuous quoting obligation in Hybrid classes should help facilitate transactions in securities in a manner that protects investors and the public interest.

The CBOE's proposal also slightly modifies the opening quoting obligations of LMMs and DPMs to include a specific time by which opening quotes must be entered. The Commission believes that the Exchange's proposal to require an opening quotation within one minute rather than promptly should provide DPMs and LMMs with clearer guidance regarding the opening quote obligation, which should facilitate compliance by LMMs and DPMs with this obligation. The Commission notes the Exchange's representation that nearly all series open for trading within this timeframe on a daily basis.[17] Therefore, the Commission believes this time frame should not be unduly burdensome to LMMs and DPMs while still helping to ensure a timely opening.

Further, the Commission believes the proposed revisions to the descriptions of the Off-Floor DPM and Off-/On-Floor LMM programs should clarify these programs, including with respect to appointments. Among other things, CBOE's proposal extends to Hybrid 3.0 classes certain provisions currently applicable to Hybrid classes, including on-floor appointments, and clarifies the effect on an on-floor appointment when an off-floor appointment is reallocated. These changes further harmonize Hybrid 3.0 with Hybrid and codify into the CBOE rules important detail regarding on and off-floor appointments.

Finally, the Commission believes that the CBOE's proposal to eliminate obsolete provisions, including those related to individual LMMs, SMMs, an expired pilot program, the former Linkage Plan, as well as references to the non-applicability of strike price intervals, bid/ask differentials, and quote continuity requirements for LEAPs, should protect investors by eliminating potential confusion that may result from incorrect references in CBOE's rules. With respect to strike price intervals, bid/ask differentials, and quote continuity requirements for LEAPs, the CBOE represents that other existing rules address those requirements [18] and, therefore, the proposed rule change should have no effect on the regulatory requirements applicable to CBOE market makers. The Commission notes that the non-substantive, technical changes proposed should help to reduce duplication, simplify and provide clarity in the Exchange's rules, which should benefit all CBOE market participants.

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act [19] that the proposed rule change (SR–CBOE–2016–009), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08426 Filed 4–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; In the Matter of Business Marketing Services, Inc., Diversified Corporate Resources, Inc., Great Lakes Recreation Co., Green Nature USA, Inc., Green St. Energy, Inc., International Total Services, Inc., J.P. Cabot Realty, Inc., Multicom Publishing, Pan American Resources, Inc., Printron, Inc., Seaboard Associates, Inc., Sona Mobile Holdings Group, Ltd., Standard Holdings Group, Ltd., TraceGuard Technologies, Inc., Tradings.net, Inc., US-Worldlink.com, Inc., Versadial, Inc., Voxcorp, Inc., and W3OTC, Inc.

April 11, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of each of the issuers detailed below because questions have arisen as to their operating status, if any. Each of the issuers below is quoted on OTC Link operated by OTC Markets Group, Inc. OTC Markets Group, Inc., however, has been unable to contact each of these issuers for more than one year. In addition, the staff of the Securities and Exchange Commission has independently endeavored to determine whether any of the issuers below are operating. Each of the issuers below either confirmed that they were no longer operating or were now private companies, failed to respond to the Commission's inquiry about their operating status, did not have an operational address, or failed to provide their registered agent with an operational address. The staff of the Securities and Exchange Commission also determined that none of the issuers below has filed any information with OTC Markets Group, Inc. or the Securities and Exchange Commission for the past year.

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[12] The provisions in current Rule 8.15A related to the on-floor LMM program would apply to Hybrid 3.0 classes pursuant to proposed Rule 8.15.

[13] *See* proposed Rule 8.15, Interpretation and Policy .01(c). This proposed change is consistent with the program for Off-Floor DPMs/On-Floor LMMs and would extend the applicability of the provision to Hybrid and Hybrid 3.0 classes that have Off-Floor LMMs (rather than Off-Floor DPMs).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

[17] *See* Notice, *supra* note 3, at 9913.

[18] *See* Notice, *supra* note 3, at 9917.

[19] 15.U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

Issuer	Ticker	Information regarding operating status *
1. Business Marketing Services, Inc	BMSV	1
2. Diversified Corporate Resources, Inc	HIRD	1
3. Great Lakes Recreation Co	GLRC	1
4. Green Nature USA, Inc	GRTU	1
5. Green St. Energy, Inc	GSTY	1
6. International Total Services, Inc	ITSW	2
7. J.P. Cabot Realty, Inc	JPCB	1
8. Multicom Publishing	MNET	1
9. Pan American Resources, Inc	PNAR	1
10. Printron, Inc	PRNI	1
11. Seaboard Associates, Inc	SAOA	1
12. Sona Mobile Holdings Group, Ltd	SNMBQ	1
13. Standard Holdings Group, Ltd	SNDH	2
14. TraceGuard Technologies, Inc	TCGD	1
15. Tradings.net, Inc	TDNC	1
16. US-Worldlink.com, Inc	USWL	1
17. Versadial, Inc	VSDL	1
18. Voxcorp, Inc	VOXR	1
19. W3OTC, Inc	WOTC	1

* Below are explanations for each of the codes used in the above table:

1=The Securities and Exchange Commission attempted to contact the issuer and either the Commission did not receive a response to its letter, the letters were returned as undeliverable, or the registered agent responded that they had no forwarding address for the issuer.

2=The Securities and Exchange Commission was able to contact the issuer, which informed the Commission that either the issuer was no longer operating or was now a private company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 11, 2016, through 11:59 p.m. EDT on April 22, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–08611 Filed 4–11–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77556; File No. SR–ISE Mercury–2016–08]

Self-Regulatory Organizations; ISE Mercury; Notice of Filing of Proposed Rule Change To Limit Mandatory Participation in Scheduled Functional and Performance Testing Under Regulation SCI to Only Those Primary Market Makers That Meet Specified Criteria

April 7, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 803, Obligations of Market Makers, to limit mandatory participation in scheduled functional and performance testing, under Regulation Systems Compliance and Integrity ("Regulation SCI"),[3] to those Primary Market Makers ("PMMs") that contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis. The Exchange proposes to also consider other factors in determining the PMMs that will be required to participate in scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans (collectively "DR Plans"), including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or PMMs that collectively account for a certain percentage of market share on the Exchange or within a specific product. In addition, the Exchange proposes to publish the criteria to be used by the Exchange to determine which PMMs will be required to participate in such testing, and notify those PMMs that are required to participate based on such criteria. The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) ("SCI Adopting Release").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 19, 2014, the Securities and Exchange Commission unanimously voted to adopt Regulation SCI, which is a set of rules designed to strengthen the technology infrastructure of the U.S. securities markets.[4] Specifically, the rules are designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission's oversight and enforcement of securities market technology infrastructure.[5]

Regulation SCI applies to "SCI entities," a term which includes SROs such as ISE Mercury. Regulation SCI requires SCI entities to, among other things, (1) establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability; (2) mandate participation by designated members in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities; (3) take corrective action with respect to "SCI events" (such as systems disruptions, systems compliance issues, and systems intrusions), and to notify the Commission of such events; (4) disseminate information about certain SCI events to affected members and, for certain "major" SCI events, to all members; and (5) review their systems by objective, qualified personnel at least annually, to submit quarterly reports regarding completed, ongoing, and planned material changes to their SCI systems to the Commission, and to maintain certain books and records.[6]

In accordance with Rule 1004 of Regulation SCI, the Exchange adopted Rules 803 and 1903 to designate all PMMs[7] and Linkage Handlers,[8] as the minimum necessary for the maintenance of a fair and orderly market should the Exchange's DR Plans be activated.[9] The Exchange also mandated participation by designated members in scheduled functional and performance testing of the operation of such DR Plans.[10]

The Exchange has reevaluated its designation of all PMMs as the minimum necessary for the maintenance of a fair and orderly market should the Exchange's DR Plans be activated and now believes that designating all PMMs is more than the minimum necessary to maintain a fair and orderly market should its DR Plans be activated. The Exchange proposes to revise Rule 803 and limit mandatory participation in scheduled functional and performance testing, under Regulation SCI and ISE Mercury Rule 803, to those PMMs that contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis. The Exchange proposes to consider other factors in determining which PMMs will be required to participate in scheduled functional and performance testing, including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or PMMs that collectively account for a certain percentage of market share on the Exchange or within a specific product. The Exchange represents that it will publish the criteria[11] to be used by the Exchange to determine which PMMs will be required to participate in such testing, and notify those PMMs that are required to participate based on such criteria.

The Exchange notes that it encourages all PMMs to connect to the Exchange's backup systems and to participate in testing of such systems. However, in revising the requirements in proposed Rule 803, the rule will subject only those PMMs to mandatory testing that the Exchange believes are, taken as a whole, the minimum necessary to maintain fair and orderly markets. The Exchange believes that designating PMMs to participate in mandatory testing because they, for example, account for a significant portion of the Exchange's overall volume or collectively account for a certain percentage of market share on the Exchange is a reasonable means to ensure the maintenance of a fair and orderly market on the Exchange should its DR Plans be activated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[12] In particular, the proposal is consistent with section 6(b)(5) of the Act,[13] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

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[4] *Id.*

[5] Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Regulation SCI at *https://www.sec.gov/divisions/marketreg/regulation-sci-faq.shtml.*

[6] *Id.*

[7] A PMM posts two-sided continuous quotations in all of the options classes to which it is appointed and undertakes special responsibilities for maintaining fair and orderly markets. PMM memberships are represented by PMM Trading Rights. The options classes trading on ISE Mercury are divided into groups or "bins", each with one PMM. One PMM member may, however, represent more than one bin.

[8] A Linkage Handler is a broker that is unaffiliated with the Exchange with which the Exchange has contracted with to provide routing services, by routing certain orders, to other exchanges as agent in connection with the Options Order Protection and Locked/Crossed Market Plan. *See* .03 to Supplementary Material to Rule 1901.

[9] On January 8, 2016, ISE Mercury submitted Amendment No. 2 to the Form 1 Application, which included an amended Rule 803 to comply with the requirements of Regulation SCI. ISE Mercury's amended Rule 803 followed the rule filings by ISE Mercury's affiliated exchanges, International Securities Exchange, LLC and ISE Gemini, LLC, which amended Rule 803 to comply with the requirements of Regulation SCI. *See* Exchange Act Release No. 76334 (November 3, 2015) 80 FR 69258 (November 9, 2015) (SR–ISE–2015–35) and Exchange Act Release No. 76332 (November 3, 2015), 80 FR 69266 (November 9, 2015) (SR–ISE Gemini–2015–23).

[10] *Id.*

[11] This criteria will be published by the Exchange, in a regulatory information circular, no later than the effective date of this rule filing.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

The Exchange believes the proposed rule revision is consistent with the Exchange Act because it complies with Regulation SCI's requirements. ISE Mercury's proposed rule designates only those PMMs it determines are necessary for the maintenance of a fair and orderly market if the Exchange's DR Plans are activated. Additionally, the proposal will ensure that the PMMs necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, as proposed, the Exchange will adopt clear and objective criteria with respect to the designation of PMMs that are required to participate in the testing of the Exchange's DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to [business continuity and disaster recovery] testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest."[14] The Exchange believes that this proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE Mercury is implementing the requirements of Regulation SCI.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b-4(f)(6) thereunder.[16] The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission, as required by Rule 19b-4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File No. SR-ISE Mercury-2016-08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE Mercury-2016-08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE Mercury-2016-08 and should be submitted by May 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-08428 Filed 4-12-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77557; File No. SR-Phlx-2016-40]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PIXL

April 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 24, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[14] *See* SCI Adopting Release, *supra* note 4 at 72350.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b-4(f)(6).

[17] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1080, entitled "Phlx XL and Phlx XL II" to amend the length of time of a Price Improvement XL or PIXL$^{\text{SM}}$ Auction and make other rule changes.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Phlx Rule 1080(n) to amend the length of time of a PIXL$^{\text{SM}}$ Auction and make other clarifying rule changes. PIXL is a component of the Exchange's fully automated options trading system, PHLX XL, that allows a member to electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order it represents as agent (an "Initiating Order") provided it submits the PIXL Order for electronic execution into the PIXL Auction ("Auction'). The Exchange adopted PIXL in October 2010 as a price-improvement mechanism on the Exchange.[3] The Exchange proposes the below changes.

PIXL Timer

Today, a PIXL Auction lasts for one second, unless it is concluded early.[4] The Exchange proposes to amend Rule 1080(n)(ii)(A)(4) to state, "the Auction will last for a period of time, as determined by the Exchange and announced on the Nasdaq Trader Web site. The Auction period will be no less than one hundred milliseconds and no more than one second." This timer is similar to the current timer length in the newly adopted BX PRISM.[5] The selected timer would be the same length of time for all auctions in all options pursuant to Phlx Rule 1080(n).

The Exchange believes that a shorter duration of time for the Auction will reduce market risk for all members executing trades in PIXL. Initiating Participants are required to guarantee an execution at the NBBO[6] or at a better price, and are subject to market risk while their PIXL Order is exposed to other Phlx members. While other Participants are also subject to market risk, those providing responses in PIXL may cancel or modify their orders. Phlx believes that the Initiating Participant acts in a critical role within the PIXL Auction. Their willingness to guarantee the orders entered into PIXL an execution at NBBO or a better price is the keystone to an order gaining the opportunity for price improvement. Phlx believes that allowing for an Auction period of no less than one hundred milliseconds and no more than one second will benefit members trading in PIXL. Phlx believes it is in these members' best interests to minimize the auction time while continuing to allow members adequate time to electronically respond. Both the order being exposed and the responding orders are subject to market risk during the Auction.

Immediate or Cancel

The Exchange is amending the Phlx Rule 1080(n) to remove certain uses of the term "rejected" to instead refer to the term "immediately cancelled." Specifically, the Exchange is amending Phlx Rule 1080(n)(ii)(A)(8)–(10). These orders are not rejected, rather they are immediately cancelled because technically they are accepted into the trading system. The Exchange believes this non-substantive change adds more clarity to the rule text. This distinction is made throughout the newly adopted BX PRISM rule, where applicable.[7]

The Exchange notes that its proposed rule text at Rule 1080(n)(ii)(A)(9) states that a PAN or Complex Order PAN response which is inferior to the stop price of the PIXL order will be cancelled. In this particular instance, the order is not immediately cancelled to prevent information leakage as to possible stop price. The order is cancelled at the end of the Auction instead.

Allocations

The Exchange is amending Phlx Rule 1080(n)(ii)(A)(1) to first make clear that under no circumstances will the Initiating Participant receive an allocation percentage, at the final price point, of more than 50% with one competing quote, order or PAN response or 40% with multiple competing quotes, orders or PAN responses, when competing quotes, orders or PAN responses have contracts available for execution. This change adds more clarity to the rule text as this limitation is present today. The Exchange recently included this clarifying rule text in the newly adopted BX PRISM rule[8] and seeks to conform the PIXL rule text to that of BX PRISM.

The Exchange is also amending Phlx Rule 1080(n)(ii)(E)(2)(b) and 1080(n)(ii)(E)(2)(c)(ii) to provide more specificity concerning the allocation to which an Initiating Participant is entitled. The amendments make clear that the allocations can be either 40% or 50% depending on whether there are one or more competing quotes, orders or PAN responses. Also, the rule text notes that public customer interest must be satisfied first. This change adds more clarity to the rule text as this allocation method is present today. The Exchange recently included this clarifying rule text in the newly adopted BX PRISM rule[9] and seeks to conform the PIXL rule text to that of BX PRISM.

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[3] *See* Securities Exchange Act Release Nos. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108) (Order Granting Approval to a Proposed Rule Change Relating to a Proposed Price Improvement System, Price Improvement XL); 65043 (August 5, 2011), 76 FR 49824 (August 11, 2011) (SR–Phlx–2011–104) (Extending Pilot for Price Improvement System, Price Improvement XL); 67399 (July 11, 2012), 77 FR 42048 (July 17, 2012) (SR–Phlx–2012–94) (Extending Pilot for Price Improvement System, Price Improvement XL); 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (SR–Phlx–2013–46) (Order Granting Approval To Proposed Rule Change, as Modified by Amendment No. 1, Regarding Complex Order PIXL); 69989 (July 16, 2013), 78 FR 43950 (July 22, 2013) (SR–Phlx–2013–74) (Extending Pilot for Price Improvement System, Price Improvement XL); and 72619 (July 16, 2014), 79 FR 42613 (July 22, 2014) (Extending Pilot for Price Improvement System, Price Improvement XL).

[4] The PIXL Auction shall conclude at the earlier to occur of (1) The end of the Auction period; (2) For a PIXL Auction (except if it is a Complex Order), any time the PBBO crosses the PIXL Order stop price on the same side of the market as the PIXL Order; (3) For a Complex Order PIXL Auction, any time the cPBBO or the Complex Order book crosses the PIXL Order stop price on the same side of the market as the PIXL Order; or (4) Any time there is a trading halt on the Exchange in the affected series.

[5] *See* NASDAQ BX, Inc. ("BX") Rules at Chapter VI, Section 9(ii)(A)(3).

[6] For Complex Orders, Initiating Members are required to guarantee an execution at the cPBBO or better.

[7] *See* BX Rules at Chapter VI, Section 9.

[8] *See* BX Rules at Chapter VI, Section 9(ii)(A)(1).

Stop Price

The Exchange is amending Phlx Rule 1080(n)(ii)(C) to revise language where the entire PIXL Order will be executed at, including, in the case of the internal BBO ("Reference BBO") crossing the PIXL Order stop price, the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to *or better than* the price of a limit order resting on the PHLX book on the same side of the market as the PIXL Order, in which case the PIXL Order will be executed against that response, but at a price that is at least one minimum price improvement increment better than the price of such limit order at the time of the conclusion of the Auction. This new "better than" language is currently also utilized in the newly adopted BX PRISM rule.[10] The Auction would look for the best price, which is this instance may be through a limit order on the same side as the PIXL Order.

For example, assume the Reference BBO and NBBO are both .97–1.03. A PIXL Order to buy 100 contracts is submitted with a contra-side Initiating Order to stop the PIXL Order at 1.01. Assume a PAN response is submitted to sell 10 contracts at .97 and another to sell 10 contracts at 1.00. Then assume an unrelated buy order is received to pay .98 for 10 contracts. The order is placed on the PHLX book and the Reference BBO becomes .98–1.03. Then assume, a participant submits a quote of 1.02–1.05, crossing the 1.01 stop price on the same side of the PIXL Order and concluding the PIXL Auction prior to the expiration of one second. Therefore, 10 contracts from the PIXL Order will be executed at .99 against the best response price of .97 which is 'better than' the price of the .98 limit order resting on the PHLX book on the same side of the market as the PIXL Order. Also, 10 contracts will be executed at 1.00 (the next best response price after the execution at .98) and the remaining 80 contracts will be executed at 1.01 (the stop price) against the Initiating Order. The Exchange believes that this language clarifies the current rule text by providing the "better than" language, which accounts for responses that are priced more aggressively than a later arriving resting limit order on the book.

Professional Order

The Exchange is amending Phlx Rule 1080(n) in the first paragraph and also 1080(n)(ii)(E)(1) to make clear that a public customer order does not include a professional[11] order. Professionals are not entitled to priority as described within the Phlx Rule 1080(n). This non-substantive change adds more clarity to the rule text. The Exchange recently included this clarifying rule text in the newly adopted BX PRISM rule[12] and seeks to conform the PIXL rule text to that of BX PRISM.

Rounding

The Exchange is amending Phlx Rule 1080(n)(ii)(E)(2)(f) to add clarifying rule text concerning the manner in which the Exchange will round shares and allocate remaining contracts, commonly known in the industry as odd lots.[13] Rule 1014 provides for the manner in which the Phlx XL electronic match engine (hereinafter "System") allocates simple interest. Within Rule 1014, the Exchange allocates shares in Price-Time priority[14] first to public customers. Thereafter, the Exchange allocates interest to Specialists[15] and Registered Options Traders[16] (hereinafter collectively "ROTs") utilizing a pro-rata allocation model.[17] Finally, the Exchange allocates remaining interest to off-floor broker dealers[18] also utilizing a pro-rata allocation model.

The Exchange proposes to precisely describe that, with respect to pro-rata allocations, the Exchange will round shares down to the nearest integer when determining the amount of the allocation in Rule 1080(n)(ii)(E)(2)(f). The Exchange believes that this detail will provide market participants with information to determine the method in which the Exchange shall allocate remaining shares.

The Exchange proposes to amend Rule 1080(n)(ii)(E)(2)(f) to add rule text to describe the manner in which remaining shares will be allocated for ROTs and also for off-floor broker dealers. If remaining shares result, from the allocation of simple interest among equally priced ROTs, remaining shares are allocated by daily random assignments of ROTs. Each ROT is assigned an order of allocation, each trading day. Trading interest, which includes orders, quotes and sweeps, are allocated in accordance with the trading day's order assignment, provided the ROT is at the best price at which the order, quote or sweep is being traded. The assignment continues throughout the trading for each allocation, picking up where it dropped off from the last allocation, provided the ROT is entitled to an allocation. If odd lots arise when allocating interest among equally priced off-floor broker-dealers, such odd lots are allocated in time priority, provided the off-floor broker-dealers is at the best price at which the order is being traded. Finally, with respect to Complex Orders, the Exchange notes in Rule 1080(n)(ii)(E)(2)(f) that residual odd lots will be allocated in time priority for Complex Orders.

The Exchange believes that these amendments will provide market participants with more information on the allocation of these odd lots.

Below are two examples, representing consecutive executions and allocations within the Order Book which demonstrates rounding and the allocation of remaining shares.

Example #1

Presume an order of 200 contracts is being allocated in the Exchange's Order Book. Allocation will first occur with public customer orders at the best price filled in time priority, since public customers always have priority on the Exchange. Presume there are 63 contracts remaining after public customer orders are filled. ROTS would be allocated next pursuant to Rule 1014 in pro-rata fashion. Presume 5 ROTs are at the best price and the allocation of the remaining 63 contracts, after public customer orders have been satisfied, is as follows:

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[9] *See* BX Rules at Chapter VI, Section 9(ii)(E)(2)(b), (ii)(E)(2)(c)(ii), (ii)(F)(2)(b) and (ii)(F)(2)(c)(ii).

[10] *See* BX Rules at Chapter VI, Section 9(ii)(C).

[11] Phlx Rule 1000(b)(14) currently states that the term "professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[12] *See* BX Rules at Chapter VI, Section 9 in the first paragraph and also at Section 9(ii)(E)(1).

[13] The Exchange rounds shares and allocates remaining shares in the manner described herein. This rule change memorializes this practice within its rules.

[14] Price-Time allocations are filled among Customer Orders in time priority.

[15] A Specialist is an Exchange member who is registered as an options specialist. *See* Phlx Rule 1020(a).

[16] A Registered Options Trader ("ROT") includes a Streaming Quote Trader or "SQT," a Remote Streaming Quote Trader or "RSQT" and a Non-SQT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[17] Pro-rata allocations may result in remaining shares as orders are allocated based on the size of the orders as a percentage of the total size among all interest at that price level.

[18] The term "off-floor broker-dealer order" means an order delivered from off the floor of the Exchange by or on behalf of a broker-dealer for the proprietary account(s) of such broker-dealer, including an order for a market maker located on an exchange or trading floor other than the Exchange's trading floor delivered for the proprietary account(s) of such market maker.

ROT A 1.10(30) × 1.20(30)—25.2 rounded down to 25 contracts
ROT B 1.10(15) × 1.20(15)—12.6 rounded down to 12 contracts
ROT C 1.10(10) × 1.20(10)—8.4 rounded down to 8 contracts
ROT D 1.10 (10) × 1.20(10)—8.4 rounded down to 8 contracts
ROT E 1.10 (10) × 1.20 (10)—8.4 rounded down to 8 contracts

After this pro-rata allocation, 2 contracts remain to be allocated. Presume for this trading day these ROTs are assigned the following order of assignment: First is ROT A, second is ROT B, third is ROT C, fourth is ROT D and fifth is ROT E. The 2 remaining contracts would be allocated as follows:

ROT A 1.10(30) × 1.20(30)—1 contract
ROT B 1.10(15) × 1.20(15)—1 contract
ROT C 1.10(10) × 1.20(10)—zero
ROT D 1.10 (10) × 1.20(10)—zero
ROT E 1.10 (10) × 1.20 (10)—zero

The next order which results in contracts remaining after the pro-rata allocation to ROTs will have such remaining contracts allocated one at a time beginning with ROT C since he was next in line based on that trading day's order of assignment, provided ROT C is at the best price with remaining interest.

Example #2

Presume an order of 200 contracts is being allocated in the Exchange's Order Book. Presume all public customer orders and ROT interest that was at the best price have been filled and there remains 9 contracts to be executed.

Off-floor broker-dealers would be allocated next pursuant to Rule 1014 in a pro-rata fashion. Presume 3 off-floor broker-dealers are at the best price and their interest had arrived in the following order. The allocation of the remaining 9 contracts is as follows:

Off-floor broker-dealer C 1.10 (5) × 1.20 (5)—4.09 contracts rounded down to 4
Off-floor broker-dealer B 1.10 (3) × 1.20(3)—2.45 contracts rounded down to 2
Off-floor broker-dealer A 1.10 (3) × 1.20(3)—2.45 contracts rounded down to 2

After this pro-rata allocation, there remains one contract to be allocated. This residual contract will be allocated in time priority as follows:

Off-floor broker-dealer C 1.10 (5) × 1.20 (5)—1 contract
Off-floor broker-dealer B 1.10 (3) × 1.20(3)—zero
Off-floor broker-dealer A 1.10 (3) × 1.20(3)—zero

Public Customers

The Exchange is amending Phlx Rule 1080(n)(vi) to add more specificity concerning public customer orders. An Initiating Participant may enter a PIXL Order for the account of a public customer paired with an order for the account of another Public Customer and such paired orders will be automatically executed without a PIXL Auction, provided there is not currently an Auction in progress in the same series or the same strategy, in which case the orders will be rejected. This rule text makes clear that with respect to Customer-to-Customer [19] PIXL Orders, those orders will be rejected when an Auction is in progress. This non-substantive change adds more clarity to the rule text. The Exchange recently included this clarifying rule text in the newly adopted BX PRISM rule [20] and seeks to conform the PIXL rule text to that of BX PRISM. Conforming changes are also made in Phlx Rule 1080(n)(ii).

The words "or strategy" in this context are not included in the BX PRISM rule because this language specifically relates to Complex Orders,[21] which are not transacted on BX, but may be transacted on Phlx within PIXL.[22] A Complex Order Strategy means a particular combination of components of a Complex Order and their ratios to one another. The Exchange will calculate both a bid price and an offer price for each Complex Order Strategy based on the current PBBO (as defined below) for each component of the Complex Order. Each Complex Order Strategy is assigned a strategy identifier by the System. With respect to Complex Order Strategies, the Exchange will permit an Initiating Participant to enter a PIXL Order for the account of a public customer paired with an order for the account of another public customer and such paired orders will be automatically executed without a PIXL Auction as long as there is not currently an Auction in progress in the same strategy. If there is an Auction in progress in the same strategy, the Customer-to Customer cross will be rejected.

To further explain same strategy, where a PIXL Order creates a second Auction where there was already an a Complex Order Strategy Auction in progress with the same combination of components and the same ratios, that PIXL Order would be rejected. If the combination of components and ratios were not the same, the PIXL Order would not be rejected. Also, a simple and Complex Order Strategy Auction may occur at the same time. The Exchange believes that this approach is consistent with the general caveat in the PIXL Auction Rule 1080(n)(ii) that only one Auction may be conducted at a time in any given series or strategy.[23]

Non-Displayed Prices

In certain instances, a resting order or quote may be internally priced at a non-displayed price and would differ from the PBBO. The Internal BBO or "Reference BBO" would differ from the PBBO in a situation where the System prevents trade-throughs and locked and crossed markets. Interest will not be executed at a price that trades through another market or is displayed at a price that would lock or cross another market. If, at the time of entry, an order or quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

The Exchange is proposing more precise rule text to account for these situations where there is an automatic repricing in order to prevent trade-throughs and locked and crossed markets. The Exchange proposes to change the rule text in relevant instances to acknowledge that repricing would result in the better of the NBBO (or PBBO) or the Reference BBO.

Conforming Change

The Exchange proposes a change to Rule 1080(n)(ii)(G). The Exchange proposes to amend the sentence which states, "[i]f the PIXL Auction price (except if it is a Complex Order) is the same as that of an order on the limit order book *represented in the PBBO* on the same side of the market as the PIXL Order, the PIXL Order may only be executed at a price that is at least one minimum price improvement increment better than the resting order's limit price or, if such resting order's limit price is equal to or crosses the stop price, then the entire PIXL Order will trade at the stop price with all better priced interest being considered for execution at the stop price," to include the "represented in the PBBO text. The Exchange believes that this clarifying rule text conforms the sentence to the remainder of the rule text by referencing the relation to the PBBO. This is not a substantive rule change.

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[19] These orders are customer retail orders.

[20] *See* BX Rules at Chapter VI, Section 9(vi).

[21] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[22] *See* Phlx Rule 1080(n).

[23] Rule 1080(n)(2) is being amended to conform to newly added rule text. While this section is being amended, the Exchange notes that the amendment is not material and the general caveat continues to apply.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[24] in general, and furthers the objectives of Section 6(b)(5) of the Act[25] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing for an Auction period of no less than one hundred (100) milliseconds and no more than one (1) second and providing a meaningful opportunity for Phlx members to respond to the PIXL Auction while at the same time facilitating the prompt execution of orders.

PIXL Timer

Phlx believes the proposed rule change could provide orders within PIXL an opportunity for price improvement. Also, the shorter duration of time for the Auction reduce the market risk for all members executing trades in PIXL. Initiating Participants are required to guarantee an execution at the NBBO or at a better price, and are subject to market risk while their PIXL Order is exposed to other Phlx members. While other participants are also subject to market risk, those providing responses in PIXL may cancel or modify their orders. Phlx believes that the Initiating Participant acts in a critical role within the PIXL Auction. Their willingness to guarantee the orders entered into PIXL an execution at NBBO or a better price is the keystone to an order gaining the opportunity for price improvement. Phlx believes that allowing for an auction period of no less than one hundred milliseconds and no more than one second will benefit members trading in PIXL. Phlx believes it is in these members' best interests to minimize the Auction time while continuing to allow members adequate time to electronically respond. Both the order being exposed and the responding orders are subject to market risk during the Auction.

While some members may wait to respond until later in the Auction, presumably to minimize their market risk, the Exchange believes that a majority of the orders would respond earlier in the Auction. Based on the Exchange's experience with the PIXL mechanism,[26] Phlx believes that an Auction of no less than one hundred milliseconds and no more than one second will continue to provide all market participants with sufficient time to respond, compete, and provide price improvement for orders and will provide investors and other market participants with more timely executions, thereby reducing their market risk. The proposed rule allows people to respond quickly at the most favorable price while reducing the risk that the market will move against the response.

Phlx believes that its members operate electronic systems that enable them to react and respond to orders in a meaningful way in fractions of a second. Phlx believes that its members will be able to compete within no less than one hundred milliseconds and no more than one second and this is a sufficient amount of time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk.

Finally, with respect to system capacity, Phlx has analyzed its capacity and represents that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with auction transactions resulting specifically from the implementation of the Auction period of no less than one hundred milliseconds and no more than one second.

Immediate or Cancel

The Exchange's amendment to remove certain uses of the term "rejected" to instead refer to the term "immediately cancelled" complies with the Exchange Act because the replacement words provide more specificity to the rule text. Today, PAN Responses that do not comply with PIXL requirements are not eligible to participant in an Auction and will be immediately cancelled, after being reviewed by the trading system. The Exchange believes that system enforced criteria will promote just and equitable principles of trade and protect investors and the public interest. The Exchange believes this change adds more clarity to the rule text to differentiate rejections and cancellations.

Allocations

The Exchange's amendment to make clear that under no circumstances will the Initiating Participant receive an allocation percentage, at the final price point, of more than 50% with one competing quote, order or PAN response or 40% with multiple competing quotes, orders or PAN responses, when competing quotes, orders or PAN responses have contracts available for execution is a rule change that makes clear that limitation to allocation in PIXL. This rule change adds more clarity to the rule text. This amendment is consistent with the Act in that it identifies the limitation in the PIXL allocation more specifically and memorializes that limitation.

The Exchange's amendment to provide more specificity concerning the allocation to which an Initiating Participant is entitled, either 40% or 50% depending on whether there are one or more competing quotes, orders or PAN responses, is a change which adds more clarity to the rule text. This amendment is consistent with the Act in that it identifies with specificity the manner in which PIXL will allocate to an Initiating Participant.

The Exchange believes that the new language of "or 50%" is consistent with the Act because the value added from Initiating Participants guaranteeing execution of Agency Orders at a price equal to or better than the NBBO warrants (to the extent that the Initiating Participants is on the final Auction price), an Auction allocation priority of at least the same percentage of the order as any competing Auction response, quote, or order when there is only one such response, quote, or order. The Exchange also believes that the proposed rule change, like other price improvement allocation programs currently offered by competitor exchanges, will benefit investors by attracting more order flow as well as increasing the frequency that Participants initiate Auctions, which may result in greater opportunities for customer order price improvement. These percentages remain competitive with the percentage of allocations currently available on other options markets.[27]

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[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] Phlx staff distributed a survey to all Phlx market maker firms inquiring as to the timeframe within which these market participants respond to an auction with a duration time ranging from less than fifty (50) milliseconds to more than one (1) second. An overwhelming number of the market maker firms that responded to the survey indicated that they were capable of responding to auctions with a duration time of at least 50 milliseconds. Of the thirty five (35) Phlx market maker firms that were surveyed, twenty (20) of these market makers responded to the survey and of those respondents 100% indicated that that their firm could respond to auctions with a duration time of at least 50 milliseconds. This survey was conducted in May 2014.

Stop Price

The Exchange's amendment to revise language where the entire PIXL Order will be executed at, including, in the case of the PBBO crossing the PIXL Order stop price, the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to *or better than* the price of a limit order resting on the PHLX book on the same side of the market as the PIXL Order, in which case the PIXL Order will be executed against that response . . ." adds more specificity to the current rule text and accounts for responses at the best price, not just equal to other prices. The Exchange believes that the ability to price improve is consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market and a national market system.

Professional Order

The Exchange's amendment to make clear that a public customer order does not include a professional order is a non-substantive change which adds more clarity to the rule text. This amendment is consistent with the Act and other rule changes which make clear the distinction between professional and public customer orders.[28]

Rounding

With respect to rounding, all rounding is down to the nearest integer. If rounding of the Initiating Participant's allocation results in an allocation of less than one contract, then one contract will be allocated to the Initiating Participant, only if the Initiating Participant did not otherwise receive an allocation. The Exchange is permitting the Initiating Participant to receive the benefit of the rounding in an allocation of less than one contract, only if the Initiating Participant did not otherwise receive an allocation, because the Initiating Participant is not eligible to receive residual contracts. The Exchange believes that rounding differently for the Initiating Participant as compared to all other market participants is not unfairly discriminatory since the Initiating Participant is not eligible to receive residual contracts as are other market participants, unless no other interest is available to trade. The Exchange currently provides that rounding shall occur in a fair and equitable manner. The Exchange proposes to amend this rule to provide that rounding shall be down to the nearest integer. The Exchange believes that rounding down uniformly is consistent with the Exchange Act because it provides for the equitable allocation of shares among the Exchange's market participants. Also, this rule change will provide market participants with transparency as to the number of shares that they are entitled to receive as the result of rounding.

The Exchange's amendment to indicate the manner in which odd lots are allocated among market participants for simple interest specifies that for ROTS, odd lots allocated among equally priced ROTs are by random assignment of ROTs each trading day in accordance with the trading day's order assignment, provided the ROT is at the best price at which the order is being traded. For off-floor broker-dealers, odd lots are allocated in time priority, provided the off-floor broker-dealers are at the best price at which the order is being traded. The Exchange believes that the allocation of odd lots uniformly for all ROTs, and separately for all off-floor broker-dealers, is consistent with the Exchange Act because it provides for the equitable allocation of shares among the Exchange's market participants. With respect to off-floor broker-dealers, the method is consistent with the Act because it relies simply on time priority, an accepted method of allocation utilized by many options exchange to prioritize orders.

Specifically, with respect to the allocation method for odd lots for ROTs, this random assignment is basically a round robin approach to the allocation. The Exchange believes that this method results in a fair and equitable allocation of shares of these market participants because each trading day the Exchange creates a new order of assignment to allocate ROTs and that order provided an independent method to assign evenly among ROTs. Also, each trading day that assignment changes so that no one ROT would have the ability to receive a greater allocation than another ROT. The Exchange believes that its assignment method is not subject to gaming since it is random and therefore complies with the Act because it is aimed at the protection of investors. Also, this rule change will provide market participants will transparency as to the number of shares that they are entitled to receive as the result of allocation odd lots.

With respect to the allocation of odd lots for Complex Orders, the Exchange will allocate in time priority. The Exchange believes that allocating Complex Orders in time priority uniformly is consistent with the Exchange Act because it provides for the equitable allocation of shares among the Exchange's market participants. Also, this rule change will provide market participants will transparency as to the number of shares that they are entitled to receive as the result of allocating odd lots.

Public Customers

The Exchange's amendment to add more specificity concerning public customer orders to indicate that a public customer paired with an order for the account of another public customer will be automatically executed without a PIXL Auction, provided there is not currently an Auction in progress in the same series or same strategy, in which case the orders will be rejected. This amendment makes clear that only one Auction may be conducted at a time in any given series is consistent with the Act and the PIXL approval order.[29] This rule text makes clear that with respect to Customer-to-Customer PIXL Orders, those orders will be rejected when an Auction is in progress in the same series. This non-substantive change adds more clarity to the rule text.

With respect to the words "or strategy," the BX PRISM rule does not contain similar language because this language specifically relates to Complex Orders, which are not transacted on BX, but may be transacted on Phlx within PIXL. Similar to the manner in which the Exchange would treat two Auctions in the same series, the Exchange will permit an Initiating Participant to enter a PIXL Order for the account of a public customer paired with an order for the account of another public customer and such paired orders will be automatically executed without a PIXL Auction as long as there is not currently an Auction in progress in the same strategy. With respect to Complex Order Strategies, the Exchange will permit an Initiating Participant to enter a PIXL Order for the account of a public customer paired with an order for the account of another public customer and such paired orders will be automatically executed without a PIXL Auction as long as there is not currently an Auction in progress in the same strategy. If there is an Auction in progress in the same strategy, the Customer-to-Customer cross will be rejected. To further explain same strategy, where a PIXL Order would create a second Auction where there was already an a Complex Order Strategy Auction in progress with the same combination of components and the same ratios, that PIXL Order would be rejected. If the combination of components and ratios were not the same, the PIXL Order would not be rejected. Also, a simple and Complex Order Strategy Auction may occur at the same time. The Exchange believes that this approach is consistent with the general caveat in the PIXL Auction that only one Auction may be conducted at a time in any given series or strategy.[30] The Exchange does not permit more than one Auction to be conducted at a time in any given series and in this case also in a given strategy because the Exchange does not desire to have competing Auctions for the same series or strategy.

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[27] *See* BX Rules at Chapter VI, Section 9.

[28] *See* Securities Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) (SR–Phlx–2010–05) (Notice of Filing of Proposed Rule Change Relating to Professional Orders).

[29] *See* Securities Exchange Act 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108).

Non-Displayed Prices

The Exchange's proposal to amend Rule 1080(n) for the addition of language to include the "Reference BBO" to clarify where the price is equal to or better than the NBBO or PBBO and the Reference BBO (internal market BBO), due to repricing for trade-throughs or locked and crossed markets, adds clarity and precision to the current rule text. The Exchange believes that it is consistent with the Act and does not otherwise create an impediment to a free and open market because today investors are subject to this repricing and have the opportunity to trade at a better price, which could result in better executions for investors. Also, by reflecting the proper rule text to account for these order types the Exchange is providing Participants with additional information with which to anticipate the manner in which the Exchange's trading system reprices interest to prevent a trade-through or locked and crossed market.

Conforming Change

The Exchange's proposal to clarify Rule 1080(n)(ii)(G) to include a reference to the PBBO will conform the Exchange's PIXL rule text. This is not a substantive amendment. The Exchange believes that this amendment will provide further clarity to the PIXL rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will conform the PIXL rule with the PRISM rule. The Exchange does not believe that the proposed changes produce an undue burden on inter-market competition because these changes will afford Phlx the opportunity to compete for order flow by offering an auction mechanism similar to that of other exchanges, specifically BX.

PIXL Timer

Phlx's amendment to the timer to a shorter duration of time for the Auction does not impose an undue burden on intra-market competition because Phlx believes that allowing for an auction period of no less than one hundred milliseconds and no more than one second will benefit members trading in PIXL. Phlx believes it is in these members' best interests to minimize the Auction time while continuing to allow members adequate time to electronically respond. The proposed rule allows people to respond quickly at the most favorable price while reducing the risk that the market will move against the response. Phlx believes that its members will be able to compete in no less than one hundred milliseconds and no more than one second and this is a sufficient amount of time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk.

Immediate or Cancel

The Exchange's amendment to remove certain uses of the term "rejected" to instead refer to the term "immediately cancelled" does not impose an undue burden on intra-market competition because PAN Responses that do not comply with PIXL requirements are not eligible to participate in an Auction and will be immediately cancelled after being reviewed by the trading system. The system enforced criteria will be applied uniformly to all Phlx members. The Exchange believes this non-substantive change adds more clarity to the rule text.

Allocations

The Exchange's amendment to make clear that under no circumstances will the Initiating Participant receive an allocation percentage, at the final price point, of more than 50% with one competing quote, order or PAN response or 40% with multiple competing quotes, orders or PAN responses, when competing quotes, orders or PAN responses have contracts available for execution does not impose an undue burden on intra-market competition. This rule change adds more clarity to the rule text. This amendment is consistent with the Act in that it identifies an existing limitation in the PIXL allocation more specifically and memorializes that limitation. The Exchange believes that the new language of "or 50%" does not create an undue burden on competition because this language is similar to language in BX PRISM and applies to all market participants utilizing Phlx.[31] The Exchange's amendment to provide more specificity concerning the allocation to which an Initiating Participant is entitled, either 40% or 50% depending on whether there are one or more competing quotes, orders or PAN responses does not impose an undue burden on intra-market competition. This is a rule change adds more clarity to the rule text. This amendment does not impose an undue burden on intra-market competition, rather, it identifies with specificity the manner in which PIXL will allocate to an Initiating Participant.

Stop Price

The Exchange's amendment to revise language where the entire PIXL Order will be executed at, including, in the case of the PBBO crossing the PIXL Order stop price, the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to *or better than* the price of a limit order resting on the PHLX book on the same side of the market as the PIXL Order, in which case the PIXL Order will be executed against that response . . ." does not impose an undue burden on intra-market competition. Rather, this language adds more specificity to the current rule text and accounts for better priced orders.

Professional Order

The Exchange's amendment to make clear that a public customer order does not include a professional order does not impose an undue burden on intra-market competition this rule change is consistent with the distinction between professional and public customer orders.

Rounding

With respect to rounding, all rounding is down to the nearest integer. If rounding of the Initiating Participant's allocation results in an allocation of less than one contract, then one contract will be allocated to the Initiating Participant, only if the Initiating Participant did not otherwise receive an allocation. The Exchange is permitting the Initiating Participant to receive the benefit of the rounding in an allocation of less than one contract, only if the Initiating Participant did not otherwise receive an allocation, because the Initiating Participant is not eligible to receive residual contracts. The Exchange does not believe that the proposal to round all remaining shares down to the nearest integer imposes an undue burden on competition because the Exchange will uniformly round in this matter.

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[30] *See* Securities Exchange Act 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108). *See also* Phlx Rule 1080(n)(ii) which states, in part, "Auction Process. Only one Auction may be conducted at a time in any given series or strategy."

[31] *See* NASDAQ BX, Inc. ("BX") Rules at Chapter VI, Section 9.

If there are contracts remaining, such contracts shall be allocated for simple interest after rounding by randomly assigning all ROTs an order of allocation each trading day, and allocating orders, quotes and sweeps in accordance with the trading day's order assignment, provided the ROT is at the best price at which the order, quote or sweep is being traded, except with respect to Complex Orders, which allocation is described in Rule 1080, Commentary .07. In the event that there are remaining contracts to be allocated for interest after rounding, such remaining contacts will be allocated in time priority, provided the off-floor broker-dealers are at the best price at which the order is being traded. Residual remaining shares will be allocated in time priority for Complex Orders.

With respect to allocating remaining contracts, the Exchange does not believe that the proposal to allocate remaining contracts for ROTs by random assignment creates an undue burden on competition because the method, which is basically round robin, results in a fair and equitable allocation of shares of these market participants. The Exchange does not believe that allocating remaining contracts to off-floor broker-dealers in time priority creates an undue burden on competition because the method will be applied uniformly among these participants. Finally, the Exchange does not believe that allocating remaining contracts to Complex Orders in time priority creates an undue burden on competition because the method will be applied uniformly to all transactions involving Complex Orders.

Public Customers

The Exchange's amendment to add more specificity concerning public customer orders to indicate that a public customer paired with an order for the account of another public customer will be automatically executed without a PIXL Auction, provided there is not currently an Auction in progress in the same series or same strategy, in which case the orders will be rejected, does not impose an undue burden on intra-market competition. This non-substantive change adds more clarity to the rule text. Also, the Exchange's amendment to add more specificity concerning public customer orders to indicate that a public customer paired with an order for the account of another public customer will be automatically executed without a PIXL Auction, provided there is not currently an Auction in progress in the same strategy, does not impose an undue burden on intra-market competition because this is consistent with the general caveat in the PIXL Auction that only one Auction may be conducted at a time in any given series or strategy.

Non-Displayed Prices

The Exchange's proposal to amend Rule 1080(n) for the addition of language to include the "Reference BBO" to clarify where the price is equal to or better than the NBBO or PBBO and the Reference BBO (internal market BBO), due to repricing for trade-throughs or locked and crossed markets, does not impose an udue burden on intra-market competition, rather the more precise language adds clarity and precision to the current rule text. This additional information will provide all market participants with information to anticipate the manner in which the Exchange's trading system operates in PIXL Auctions.

Conforming Change

The Exchange's proposal to clarify Rule 1080(n)(ii)(G) to include a reference to the PBBO to conform the Exchange's PIXL rule text does not impose an undue burden on intra-market competition because the amendment is non-substantive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[32] and subparagraph (f)(6) of Rule 19b–4 thereunder.[33]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) so that Phlx make conform its current rule text to that of BX PRISM to compete effectively against this market. The Commission has determined to waive the 30-day operative delay in order to permit Phlx to implement without delay its proposed rule changes to incorporate recently-approved provisions in the substantially similar rules of BX. The Commission believes that such waiver is consistent with the protection of investors and the public interest as the proposed changes do not raise any material new issues that have not been previously considered by the Commission.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

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[32] 15 U.S.C. 78s(b)(3)(a)(iii).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–40 and should be submitted on or before May 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08429 Filed 4–12–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14685 and #14686]

Mississippi Disaster Number MS–00084

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4268–DR), dated 03/25/2016.

Incident: Severe Storms and Flooding.

Incident Period: 03/09/2016 and continuing.

Effective Date: 04/05/2016.

Physical Loan Application Deadline Date: 05/24/2016.

EIDL Loan Application Deadline Date: 12/27/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of MISSISSIPPI, dated 03/25/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
  George, Pearl River.
Contiguous Counties: (Economic Injury Loans Only):
  Mississippi: Hancock, Harrison, Jackson.
  Louisiana: Saint Tammany.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–08406 Filed 4–12–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14675 and #14676]

Texas Disaster Number TX–00465

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of TEXAS (FEMA–4266–DR), dated 03/19/2016.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/07/2016 through 03/29/2016.

DATES: *Effective Date:* 04/04/2016.

Physical Loan Application Deadline Date: 05/18/2016.

EIDL Loan Application Deadline Date: 12/19/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of TEXAS, dated 03/19/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
  Henderson, Limestone, Shelby, Tyler.
Contiguous Counties: (Economic Injury Loans Only):
  Texas: Anderson, Cherokee, Ellis, Falls, Freestone, Hill, Kaufman, Leon, Mclennan, Nacogdoches, Navarro, Polk, Robertson, Van Zandt.
  Louisiana: De Soto.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–08407 Filed 4–12–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14667 and #14668]

Louisiana Disaster Number LA–00062

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of LOUISIANA (FEMA–4263–DR), dated 03/13/2016.

Incident: Severe Storms and Flooding.

Incident Period: 03/08/2016 and continuing.

DATES: *Effective Date:* 04/04/2016.

Physical Loan Application Deadline Date: 05/12/2016.

EIDL Loan Application Deadline Date: 12/13/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

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[35] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of LOUISIANA, dated 03/13/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Catahoula, East Carroll, Franklin, Lincoln, Saint Helena.

Contiguous Counties: (Economic Injury Loans Only): Louisiana; Concordia, East Feliciana. Mississippi; Issaquena.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,
Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–08404 Filed 4–12–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2015–0061]

Social Security Ruling, SSR 16–4p; Titles II and XVI: Using Genetic Test Results To Evaluate Disability

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are giving notice of SSR 16–4p. This SSR explains how we consider the results of genetic tests in disability claims and continuing disability reviews under titles II and XVI of the Social Security Act, consistent with our policies for determination of disability.

DATES: *Effective Date:* April 13, 2016.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Office of Vocational Evaluation and Process Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so under 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004—Social Security—Survivors Insurance; 96.006 Supplemental Security Income.)

Dated: April 6, 2016.

Carolyn W. Colvin,
Acting Commissioner of Social Security.

POLICY INTERPRETATION RULING

Titles II and XVI: Using Genetic Test Results To Evaluate Disability

PURPOSE: This SSR explains how we consider medical evidence containing the results of genetic tests and helps adjudicators, including disability examiners and medical and psychological consultants, consistently apply our policies in disability claims.[1]

CITATIONS: Sections 216(i), 223(d), 223(f), 1614(a)(3) and 1614(a)(4) of the Social Security Act, as amended; 20 CFR part 401; 20 CFR 401.55, 404.1505, 404.1508, 404.1512, 404.1513, 404.1519a, 404.1519m, 404.1520, 404.1520b, 404.1527, 404.1528, 404.1529, 404.1545, 416.905, 416.906, 416.908, 416.911, 416.912, 416.913, 416.919a, 416.919m, 416.920, 416.920b, 416.924, 416.924a, 416.926a, 416.927, 416.928, 416.929, and 416.945; and 20 CFR part 404, appendix 1.

INTRODUCTION: In all claims for disability, we need objective medical evidence to establish the existence of a medically determinable impairment (MDI). Genetic test results sometimes are a part of this objective medical evidence and can also be of value at other points in the sequential evaluation process. In this ruling, we provide basic information about genetic testing and clarify how we apply our policies when evaluating genetic test results found in the medical evidence of record (MER).

POLICY INTERPRETATION: We consider all medical evidence, including genetic test results, when evaluating a claim for disability benefits. The information that follows is presented in question and answer format and provides details about medical genetics and how to consider MER containing genetic test results under our disability policy. Questions 1 through 3 provide basic background information about genetic tests and their use in the medical setting. Question 4 discusses the relevance of genetic test results to our disability program. Question 5 discusses whether genetic test results alone are sufficient to make a disability determination. Question 6 clarifies that we do not purchase genetic testing. Questions 7 through 11 specify how adjudicators should handle evidence containing genetic test results at various points of the adjudication process. Question 12 addresses our policy on the disclosure of genetic information.

List of Questions

1. *What is genetic testing?*
2. *How do genetic variants relate to medical disorders?*
3. *Why do medical professionals order genetic tests?*
4. *Why are genetic tests relevant to us?*
5. *Are genetic test results alone sufficient to make a disability determination or decision?*
6. *Will we purchase genetic testing by way of consultative examination (CE)?*
7. *Do we consider medical evidence that includes the results of genetic tests?*
8. *Do we require genetic test results to find a claimant disabled?*
9. *Who typically provides genetic test evidence?*
10. *Can we consider genetic test results in the sequential evaluation process?*
11. *If a person is found disabled, can we use genetic test results when setting a diary for continuing disability review (CDR)?*
12. *What is our policy regarding the disclosure of the results of genetic tests?*

Answers

1. What is genetic testing?[2]

Genetic testing is a type of medical test that identifies variations in genetic material. Genetic testing uses laboratory methods to detect genetic variations associated with a disease, condition, or genetic disorder. For the purposes of this ruling, we will consider tests that analyze *chromosomes, deoxyribonucleic acid* (DNA), or *ribonucleic acid* (RNA) for the purpose of identifying congenital genetic variations to be genetic tests.[3] Different types of laboratory tests constitute genetic tests. For example, *karyotyping,* which counts and examines the appearance of chromosomes in a cell, is a type of genetic test. Some other types of genetic tests read and evaluate the sequence of the nucleotide bases that make up a DNA molecule or examine changes at one specific place in the genome. Differences from the normal (or reference) sequence are known as mutations or variants. Variants also encompass partial or complete loss or gain of gene copies.

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[1] For simplicity, we refer in this SSR only to initial claims for disability benefits under titles II and XVI of the Social Security Act (Act). However, the policy interpretations in this SSR also apply to continuing disability reviews of adults and children under sections 223(f) and 1614(a)(4) of the Act, and to redeterminations of eligibility for benefits we make in accordance with section 1614(a)(3)(H) of the Act when a child who is receiving title XVI payments based on disability attains age 18.

[2] For help with the definitions of the terms and concepts related to genetic testing in this SSR, see the National Human Genome Research Institute (NHGRI) Talking Glossary of Genetic Terms, available at *http://www.genome.gov/glossary/index.cfm.*

2. How do genetic variants relate to medical disorders?

People generally have two copies of every gene in their body, one contributed by their biological mother, the other contributed by their biological father. Some disorders are caused by a variation in a single gene. In certain cases, having a variation in just one of the two copies of the gene is enough to lead to a disorder. If a variant's occurrence in only one copy of the gene is sufficient for a person to develop the disorder, the disorder is *dominant.* The disorder is *recessive* if an associated variant must occur in both copies of the gene for a person to develop the disorder.

Even when a person knows that he or she has a genetic variant associated with or causative of a certain disorder, he or she may not always develop the condition. *Penetrance* is the term that describes the frequency with which people in a population with a given genetic variant actually display signs and symptoms of the associated disorder. It is often expressed as a percentage. *Complete penetrance* indicates that all people in a population with the genetic variant will develop the disorder. *Incomplete* or *reduced penetrance,* which is far more common, means that only some people in a population with the variant will actually get the disorder. The probability that a given person will have a disorder given that they have the variant is known as *risk* or *chance.*

Variants can interact either with one another or with environmental influences (such as ultraviolet light, diet, or smoking) to result in a disorder. These types of disorders are called *complex* or *multifactorial* disorders. Even when genetic variants associated with complex disorders are known, it may be difficult to determine the risk of developing such disorders based on genetic test results. For example, changes in a person's exposure to relevant environmental influences can modify the risk of developing a disease or the severity of a genetic condition.

Chromosomal abnormalities can lead to disorders as well. A chromosome is an organized package of DNA located in the nucleus of a cell. People generally have 2 copies of each of 23 chromosomes in their cells. *Aneuploidy* means an incorrect number of chromosomes. Down syndrome is an example of a genetic disorder caused by aneuploidy. It is the result of a person having an extra copy of chromosome 21 in some or all of his or her cells. A defect in a chromosome's structure may also cause a genetic condition. Cri du chat syndrome is an example of a disorder that results from a structural chromosomal abnormality. It is due to one chromosome 5 missing a part.

3. Why do medical professionals order genetic tests?

Like other laboratory tests or procedures, genetic tests can help medical professionals diagnose a particular disease or disorder. They assist in predicting the extent of disease features or risk of developing a certain disorder, aid in therapy, and provide useful information for reproductive purposes.

a. Diagnostic Tests

Medical professionals may use genetic tests to diagnose a particular disorder. They will usually order or perform these tests when a person has medical signs or symptoms consistent with that disorder and a link between specific genetic variations and the disorder is well-characterized. They may also use testing when a disorder is present but unrecognized (or undiagnosed) to work through a list of possibilities, *i.e.,* differential diagnoses. Such tests are known as *diagnostic* genetic tests. Hemochromatosis is an example of a disease for which medical professionals use a diagnostic genetic test to help confirm a diagnosis.[4]

b. Predictive Tests

A person might choose to have a genetic test even if he or she does not have medical signs or symptoms indicative of a disorder. Instead, he or she may undergo testing to find out whether he or she has a genetic variant that might put him or her at risk for developing a disorder in the future. This type of test is a *predictive* genetic test. A positive predictive test result may result in a pre-symptomatic diagnosis of a genetic condition, or just knowledge of an increased risk of developing that condition. Examples of predictive genetic tests are those looking for variations in the genes *BRCA1* and *BRCA2,* which assess a person's risk for certain inherited breast and ovarian cancer syndromes.[5]

It is important to note that, for many conditions, predictive genetic tests cannot tell with certainty whether a person will develop a disorder. The results of predictive genetic tests generally give a probability or range of probabilities that a disorder will eventually develop in the person being tested. Predictive genetic tests also generally cannot tell a person precisely how the disorder will affect him or her. Many times, predictive genetic testing is most helpful when a person has a known family history of a disease, and not knowing the disease risk would lead to serious consequences. A person may choose to undergo predictive genetic testing to make decisions about future medical care or to implement lifestyle changes to help mitigate potential risk for adverse health effects.

c. Pharmacogenetic Tests

Medical professionals might order *pharmacogenetic* tests for a patient who needs to receive pharmaceutical therapy for his or her disorder. The information from this kind of genetic test can help medical staff understand how a patient may react to a particular drug and assist in selection of the safest, most effective type and dosage of medicine for that specific person.

d. Tests for Reproductive Purposes

There are genetic tests that people obtain prior to having a child in order to inform them about the potential for a genetic disorder in their child. These reproductive genetic tests include *carrier* tests, *prenatal* tests, and *predictive* tests for a late-onset dominant disorder in an at-risk parent.[6] Carrier genetic tests are performed on people who display no symptoms for a genetic disorder but may be at risk for passing it on to their children. Diagnostic prenatal genetic tests show if the developing baby has a certain genetic condition. A parent with a family history of a genetic disorder with dominant inheritance that does not manifest until after childbearing years may wish to get a predictive genetic test for that disorder to understand the risk of passing that disorder to his or her child.

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[3] Clinicians may perform gene expression profiling for certain types of malignant tumors to gather information for cancer treatment. We do not consider such tests in this SSR.

[4] See the Genetics Home Reference page for hemochromatosis available at *http://ghr.nlm.nih.gov/condition/hemochromatosis.*

[5] See the National Cancer Institute, at the National Institutes of Health's, discussion of *BRCA1* and *BRCA2,* available at *http://www.cancer.gov/cancertopics/pdq/genetics/breast-and-ovarian/HealthProfessional/page2.*

4. Why are genetic tests relevant to us?

Scientific researchers are discovering an increasing number of associations between genetic variants and medical disorders.[7] With this knowledge often comes the ability to perform a laboratory test to determine whether a person carries a genetic variation associated with a particular disorder. There are tens of thousands of genetic tests available for clinical use and the number continues to grow. These tests can identify thousands of genetic disorders.[8] The results of such tests may appear in disability case records. Genetic tests are more widely available and genetic test results are now more commonplace within disability case files.

5. Are genetic test results alone sufficient to make a disability determination or decision?

With the sole exception of non-mosaic Down syndrome, genetic test results alone are not sufficient to make a disability determination or decision. A person may be found disabled based on meeting the criteria for non-mosaic Down syndrome in the Listing of Impairments (listings) under 10.06A and 110.06A, when this condition is documented by a karyotype report signed by a physician.[9] Genetic test results alone are otherwise not sufficient to make a disability determination; however, in two other medical listings, we use genetic test results as part of the criteria to evaluate whether a person's impairment meets the listing.[10] Additional evidence, including signs and symptoms of a person's impairment, is generally necessary to make a disability determination. As genetic testing continues to advance, we will consider appropriate changes to our program policy.

6. Will we purchase genetic testing by way of consultative examination (CE)?

No. We will not order genetic testing in a CE. While genetic test results may provide valuable information when they appear as part of a large body of MER, they are not necessary to establish a finding of disability.

7. Do we consider medical evidence that includes the results of genetic tests?

Yes, we consider all evidence we receive, including genetic test results, when evaluating a disability claim.[11] In considering a disability claim, we generally request evidence about a person's medical impairment(s) for a period of at least the 12 months (and a longer duration if circumstances warrant) preceding the month in which a person files an application.[12] This includes objective medical evidence, a claimant's reported symptoms, statements from others about the effects of the claimant's impairment(s), and opinion evidence.[13]

The results of genetic tests constitute laboratory findings, which are considered objective medical evidence. Consistent with our regulations, when genetic test results are available, we will consider them, together with all relevant evidence available in the case record, such as signs, symptoms, other laboratory findings, and medical opinion evidence.[14] When evidence is inconsistent, such as when genetic test results are inconsistent with other substantial evidence, we will resolve the inconsistency when it is material to the disability determination, as we do with all medical evidence.[15]

8. Do we require genetic test results to find a claimant disabled?

No, genetic test results are not required for a finding of disability. A finding of disability requires a claimant to have an MDI, which can be expected to result in death or which has lasted or can be expected to last for a continuing period of not less than 12 months.[16] We establish physical and mental impairments by medical evidence consisting of signs, symptoms, and laboratory findings.[17] While several medical listings require or reference the use of genetic test results as a way to meet the applicable listing at step 3 of the sequential evaluation process,[18] our rules do not require the results of genetic tests in order to determine that a person is disabled.

9. Who typically provides genetic test evidence?

We typically receive the results of genetic tests in medical evidence from clinical geneticists, other physicians, and genetic counselors. Claimants sometimes provide results of "direct-to-consumer" (DTC) medical tests. We will consider genetic test results from all sources, medical and otherwise.[19]

a. Geneticists and Other Physicians

Clinical geneticists are physicians specializing in the diagnosis and management of hereditary disorders. Clinical geneticists and other licensed physicians have a medical degree and are acceptable medical sources (AMS). We establish the existence of an MDI using objective medical evidence (signs or laboratory results) from an AMS. Cytogeneticists, biochemical geneticists, and molecular geneticists may hold a Ph.D. or a medical degree (*e.g.,* M.D. or D.O.); those without a medical degree are generally not AMSs. For example, Ph.D. cytogeneticists typically work in laboratories or act as clinical consultants, but do not regularly interact with patients. These types of geneticists may be involved in obtaining genetic testing results and may be board-certified, but they are not AMSs if they are not also licensed physicians or otherwise classified as an AMS.

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[6] We do not make a determination of disability for fetuses. We can, however, consider the results of certain prenatal genetic tests as part of the MER in accordance with our policy once the child is born and a disability claim has been filed on his or her behalf.

[7] Current statistics on genetic variants and corresponding conditions can be found at the Online Mendelian Inheritance in Man database on the "Statistics" page, available at *http://www.ncbi.nlm.nih.gov/clinvar/submitters/* or *http://www.omim.org/statistics/entry.*

[8] See the NCBI Genetic Testing Registry, available at *http://www.ncbi.nlm.nih.gov/gtr/all/tests/?term=all%5bsb* (last visited August 2015). See also, the American Medical Association (AMA) page regarding genetic testing, available at *http://www.ama-assn.org/ama/pub/physician-resources/medical-science/genetics-molecular-medicine/related-policy-topics/genetic-testing.page*? See also, the Centers for Disease Control and Prevention (CDC) page regarding genetic testing, available at *http://www.cdc.gov/genomics/gtesting/.*

[9] Under listings 10.06A and 110.06A, a laboratory report of karyotype analysis not signed by a physician is also sufficient if it is accompanied by a statement of a physician that the person has Down syndrome.

[10] These listings are for xeroderma pigmentosum (8.07A and 108.07A), 20 CFR part 404, subpart P, appendix 1.

[11] 20 CFR 404.1512(b)(1), 404.1513(b)(3), 404.1520(a)(3), 404.1528(c), 416.912(b)(1), 416.913(b)(3), 416.920(a)(3), 416.928(c).

[12] 20 CFR 404.1512(d), 404.1519m, 416.912(d), and 416.919m.

[13] 20 CFR 404.1512(b), 404.1513(d), 404.1527, 416.912(b), 416.913(d), and 416.927. SSR 06–03p.

[14] 20 CFR 404.1512(b), 404.1520(a)(3), 416.912(b), 416.920(a)(3), 416.924(a), and 416.924a(a)(1)(i).

[15] 20 CFR 404.1520b and 416.920b

[16] 20 CFR 404.1505(a) and 416.905(a).

[17] 20 CFR 404.1508 and 416.908.

[18] Listings 8.07, 10.06A, 10.06B, 108.07, 110.06A, and 110.06B, 20 CFR part 404, subpart P, appendix 1, require genetic testing results in order for these impairments (genetic photosensitivity disorders and non-mosaic Down syndrome) to meet the listing.

[19] 20 CFR 404.1513(a), 404.1513(d), 416.913(a), and 416.913(d).

b. Genetic Counselors

Genetic counselors assess and communicate genetic risk for medical conditions in a person and members of his or her biological family. They obtain and evaluate personal and family medical histories as well as identify and coordinate genetic tests and other diagnostic studies, as appropriate, to obtain needed information for a genetic assessment. They are also able to explain the clinical implications of genetic laboratory tests and other diagnostic studies and their results.[20]

These professionals typically hold a master's degree in Genetic Counseling and may be board-certified by the American Board of Genetic Counseling (denoted by the use of the credential "Certified Genetic Counselor" or CGC). However, we do not consider a genetic counselor to be an AMS under our rules unless the individual is also a licensed physician or other AMS provider. This is true even when the genetic counselor is licensed to practice genetic counseling by his or her State. We cannot establish the existence of an MDI based solely on a report from a genetic counselor. We can use evidence from genetic counselors working in an independent capacity to show the severity of a person's impairment and how it affects the person's ability to work, or, for children, how the child typically functions compared to children of the same age who do not have impairments.[21]

c. "Direct-to-Consumer" (DTC) Tests

DTC genetic tests are available and appear to be growing in popularity. These tests are generally marketed directly to consumers via television, print advertisements, or the internet. A person typically collects a DNA sample at home, such as by swabbing the inside of the cheek, and mails the sample back to the laboratory for testing. In some cases, the person must visit a health clinic to have blood drawn. The samples are analyzed and consumers are directly notified of the results by mail, over the telephone, or online.[22]

There is currently little regulation and oversight of DTC genetic testing, leading to concerns about its accuracy, reliability, and clinical relevance.[23] DTC services generally do not establish an appropriate chain of custody of the DNA sample. There is no assurance that DTC genetic test results belong to a given claimant, as the entire transaction typically takes place with no personal interaction with a medical source or without any type of oversight that confirms the identity of the person providing the sample. For these reasons, DTC genetic test results cannot be the basis for establishing an MDI, regardless of AMS adoption or involvement.[24] Nevertheless, DTC results, when consistent with independent credible objective medical evidence, can help corroborate other findings or the claimant's allegations.[25]

10. Can we consider genetic test results in the sequential evaluation process?

Yes, we consider genetic test results and all other evidence in varying ways throughout the sequential evaluation process.[26] At step 2 we establish whether a person has an MDI and whether the impairment or combination of impairments is severe, *i.e.,* whether it significantly limits the physical or mental ability to do basic work activities.[27] Information from genetic test results can help establish an MDI if they are from an AMS and not based on DTC test results. However, a genetic test alone cannot typically show whether or not an impairment is severe. At step 3 we consider whether the impairment meets or medically equals the requirements of a listed impairment in the medical listings. Several of our medical listings include criteria that require appropriate genetic test results for an impairment to meet the listing.[28]

If a person's MDI does not meet or medically equal a listing, we assess whether the impairment(s) results in functional limitations that would prevent him or her from performing past relevant work or other work at steps 4 and 5 of sequential evaluation.[29] For children, we assess whether the impairment(s) causes marked and severe functional limitations.[30] Genetic test results generally do not provide us with significant information about impairment severity or functional capacities.

a. Can we use genetic test results to establish an MDI (Step 2)?

When genetic test results come from an AMS and are not based on DTC genetic testing, we can use the evidence to establish an MDI if there are signs and symptoms consistent with the impairment.[31] We can consider the results of previously-performed genetic testing in establishing an MDI, if signs and symptoms of an impairment are present. We cannot use the results of genetic tests, in the absence of any signs or symptoms, as the sole basis for establishing an MDI, even if the results are highly-suggestive of the eventual development of an impairment.[32] We must be able to establish that a person has an MDI at the disability onset date.

Although non-physician geneticists are generally not AMSs, a physician or other AMS typically reviews or evaluates test results produced by a non-physician geneticist and incorporates these test results into an individual's medical record. In such a case, the evidence can be used to help establish an MDI. Similarly, genetic counselors are generally not AMSs. Therefore, we cannot establish the existence of an MDI based solely on a report from a genetic counselor. However, genetic counselors typically work in a setting where they are in close collaboration with a physician or other AMS. When a person is referred for diagnostic testing by a genetic counselor, the results are often reviewed, evaluated, interpreted, or used by a physician and incorporated into a medical record. In such a case, this evidence can help establish an MDI.

Similar to imaging from an x-ray or MRI, which requires AMS involvement to establish an MDI, a genetic test result without AMS involvement cannot establish an MDI. A DTC genetic test result, even if evaluated, interpreted, or otherwise utilized by an AMS, cannot lead to the establishment of an MDI because there is no assurance that the test results belong to a given claimant and no appropriate chain of custody of the sample is established.

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[20] See the National Society of Genetic Counselors (NSGC) page regarding genetic counselor licensure, available at *http://nsgc.org/p/cm/ld/fid=18.*

[21] 20 CFR 404.1513(d) and 416.913(d).

[22] See the Genetics Home Reference page, a service of the U.S. National Library of Medicine, detailing what direct-to-consumer genetic testing is, available at *http://ghr.nlm.nih.gov/handbook/testing/directtoconsumer.* See also, the American College of Preventative Medicine's Genetic Testing Clinical Reference for Clinicians and Genetic Testing Time tool pages, illustrating the growth of genetic testing, available at *http://www.acpm.org/?GeneticTestgClinRef.*

[23] See Yale Journal of Biology and Medicine, Direct-to-Consumer Genetic Testing: A Comprehensive View. (Yale J Biol Med. Sep 2013; 86(3): 359–365). See also, the American Society of Human Genetics statement on direct-to-consumer genetic testing in the United States. (Am. J. Hum. Genet. 2007; 81: 635–637).

[24] 20 CFR 404.1508 and 416.908.

[25] 20 CFR 404.1520b and 416.920b.

[26] Step 1 of the sequential evaluation process considers work activity and whether a claimant is engaged in substantial gainful activity. Genetic testing or genetic test results do not impact this step.

[27] For children, we will consider whether you have more than a slight abnormality or combination of slight abnormalities that cause more than minimal functional limitations. See 20 CFR 404.1520(c), 416.920(c), and 416.924(c).

[28] See FN 18.

[29] 20 CFR 404.1520(f), 404.1520(g), 416.920(f), and 416.920(g).

[30] 20 CFR 416.906 and 416.926a.

[31] Predictive, as opposed to diagnostic, test results from an AMS do not constitute laboratory results that can establish an MDI.

[32] For example, see FN5 regarding the predictive nature of genetic tests for *BRCA1* and *BRCA2.* The meeting of listings 10.06 or 110.06, based on a karyotype report signed by a physician, would be an exception.

Many disorders with a known genetic basis can be, and often are, established by means other than genetic tests. For example, although diagnostic genetic tests for cystic fibrosis exist, as do guidelines surrounding their use, the most common confirmatory test for this disease is the sweat chloride test, which measures the concentrations of a certain electrolyte in a person's sweat.[33] It is not a genetic test. While we consider genetic test results in conjunction with the rest of the objective medical evidence when they are available, we do not require a person to undergo such testing to prove they have an MDI or are disabled.

b. Can we evaluate impairment severity using the results of genetic tests (Step 2)?

To some extent, genetic test results can be helpful in our overall impairment evaluation, but generally they do not help us determine whether or not an impairment is severe. For an impairment to be severe, it must significantly limit an adult's physical or mental ability to do basic work activities.[34] In the case of a child, for an impairment to be severe it must be more than a slight abnormality that causes more than minimal functional limitations.[35]

Genetic test results generally do not provide information about the degree of functional limitation associated with an impairment, but they can be used to help evaluate for consistency with or supportability of alleged symptoms and limitations. With the exception of non-mosaic Down Syndrome, we need evidence other than genetic test results to show a person's impairment is severe. This evidence comes from other medical records, a claimant's report of symptoms, and statements from nonmedical sources.[36]

c. Can we evaluate medical listings with genetic test results (Step 3)?

For several medical listings, we use genetic test results to evaluate whether a person's impairment meets a medical listing. Four of our medical listings include, as part of the criteria for an impairment to meet a listing, the use of appropriate genetic test results.[37] Listings 10.06 and 110.06 for non-mosaic Down syndrome (trisomy 21) use the results of genetic tests. Karyotyping for Down syndrome is the "gold standard" for diagnosis. We typically require the results of karyotype analysis for an impairment to meet 10.06A, 10.06B, 110.06A, or 110.06B.[38] Additionally, we require diagnostic genetic test results for xeroderma pigmentosum to meet listing 8.07A or 108.07A.

We may also use genetic test results indicating the presence of a catastrophic congenital disorder, such as Edward's syndrome (trisomy 18), to find a child's impairment meets listing 110.08. Other medical listings are for disorders, such as cystic fibrosis[39] and chronic myelogenous leukemia, with at least one known genetic basis and an available associated test.[40] Often, additional medical evidence is required to find a person's impairment meets a relevant listing.[41]

d. Can we evaluate the degree of limitation and residual functional capacity (RFC) using genetic test results (Steps 4 and 5)?

While genetic tests may help to establish the presence of a disorder and assist in determining whether an impairment meets or medically equals a listing, the results alone generally do not provide us with information about the degree of a person's limitation due to the impairment. A claimant's RFC reflects the most he or she can do despite his or her limitations.[42] If an adult's impairment does not meet or medically equal a listing at step 3 of the sequential evaluation process, we assess RFC, which applies to both steps 4 and 5. If a child's impairment does not meet or medically equal a listing, we assess functional equivalence. Functional equivalence deals with broad areas of functioning intended to capture all of what a child can or cannot do.[43] As is the case with RFC, genetic test results alone generally do not provide us with information about the degree of limitation as it relates to functional equivalence.

To assess a claimant's impairments beyond step 3, we need non-genetic evidence about the impairment's effect on a person's functioning to determine the most the person can do despite his or her limitations and restrictions.[44] Many disorders associated with known gene mutations are multifactorial in nature. Environmental and other influences that are not well-understood affect the development of medical signs and symptoms resulting from the disorder and the degree of limitation a person with the disorder experiences. Therefore, additional evidence is necessary to adequately assess a person's RFC and ability to engage in work activities.

However, results of genetic tests can be assessed for consistency with a person's symptoms and alleged limitations. For example, genetic test results may lead an AMS to diagnose familial Mediterranean fever. A common symptom is painful inflammation in various areas of the body, including joints.[45] If someone complains of significant joint pain and has genetic test results leading to a diagnosis of familial Mediterranean fever, we can take into account that the claimant's reported symptoms are consistent with the genetic test results.

11. If a person is found disabled, can we use genetic test results when setting a diary for continuing disability review (CDR)?

Yes. We consider all impairments and case facts to determine when to conduct a CDR. We conduct a full evaluation of all evidence, including genetic test results, when setting diary dates. Due to the diversity of types of genetic tests and the differing types of information that genetic test results can provide, the impact of genetic test results on diary lengths will vary.

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[33] See *http://www.nlm.nih.gov/medlineplus/ency/article/003630.htm.*

[34] 20 CFR 404.1520(c) and 416.920(c).

[35] 20 CFR 416.924(c).

[36] In cases of a catastrophic congenital disorder, as detailed in listing 110.08, 20 CFR part 404, subpart P, appendix 1, or other extreme cases, genetic test results alone may show a person's impairment is severe.

[37] These listings include those for xeroderma pigmentosum (8.07A and 108.07A) and non-mosaic Down syndrome (10.06A and 110.06A), 20 CFR part 404, subpart P, appendix 1.

[38] Listings 10.06 and 110.06, 20 CFR part 404, subpart P, appendix 1, require that a claimant's non-mosaic Down syndrome be documented by: A. a laboratory report of karyotype analysis signed by a physician, or both a laboratory report of karyotype analysis not signed by a physician and a statement by a physician that you have Down syndrome (see 10.00C1); B. a physician's report stating that you have chromosome 21 trisomy or chromosome 21 translocation consistent with prior karyotype analysis with the distinctive facial or other physical features of Down syndrome (see 10.00C2a); or C. a physician's report stating that you have Down syndrome with the distinctive facial or other physical features and evidence demonstrating that you function at a level consistent with non-mosaic Down syndrome (see 10.00C2b).

[39] Listings 3.04 and 103.04, 20 CFR part 404, subpart P, appendix 1.

[40] Listings 13.06B and 113.06B, 20 CFR part 404, subpart P, appendix 1.

[41] 20 CFR part 404, subpart P, appendix 1. For example, Marfan syndrome (listings 4.00H and 104.00F) and genetic photosensitivity disorders other than xeroderma pigmentosum (listing 8.07 and 108.07).

[42] 20 CFR 404.1545 and 416.945.

[43] 20 CFR 416.906 and 416.926a.

[44] 20 CFR 404.1545(a), 416.945(a), and SSR 96–8p, Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims (1996), 61 FR 34474, available at *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-08-di-01.html.*

[45] See *http://ghr.nlm.nih.gov/condition/familial-mediterranean-fever.*

12. What is our policy regarding the disclosure of the results of genetic tests?

The Privacy Act of 1974 (5 U.S.C. 552a), section 1106 of the Social Security Act (42 U.S.C. 1306), and our disclosure regulations (20 CFR part 401) govern the collection, maintenance, and use of an individual's information in our systems of records. Although these authorities do not specifically address requirements for the disclosure of genetic test results, they apply to the extent we maintain this type of information in our records.

Under the Privacy Act and our disclosure regulations, we generally cannot disclose genetic test results without the consent of the subject of the record. For example, if an individual's MER contains genetic test results and he or she authorizes us to disclose this specific information to a third party, we will do so with a valid, written consent that meets our regulatory requirements.

In addition, the Privacy Act grants individuals a right of access to any records we maintain about them in our systems of records. Therefore, any genetic test results we maintain in an individual's MER (including records a medical consultative examiner may have generated on our behalf) are subject to these access requirements, as is the case with all medical evidence. However, if we determine that direct access to the medical information is likely to have an adverse effect on the subject of the record, we will follow certain procedures in providing access to the information.[46]

EFFECTIVE DATE: This SSR is effective on April 13, 2016.

CROSS REFERENCES: SSR 86–8, Titles II and XVI: The Sequential Evaluation Process; SSR 96–2p, Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions; SSR 96–5p, Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner; SSR 96–7p, Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements; SSR 96–8p, Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims; SSR 06–3p, Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not "Acceptable Medical Sources" in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies; and Program Operations Manual System (POMS) DI 00115.015, DI 22501.001, DI 22505.001, DI 22505.003, DI 24501.020, DI 24515.001, DI 24515.061, DI 24515.062, DI 25201.005.

[FR Doc. 2016–08467 Filed 4–12–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9515]

Advisory Committee on International Economic Policy

ACTION: Notice of open meeting.

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2:00 p.m. until 5:00 p.m., on Tuesday, May 17, in Washington, DC at the State Department, 320 21st Street NW., in conference room 4477. The meeting will be hosted by the Assistant Secretary of State for Economic and Business Affairs, Charles H. Rivkin and Committee Chair Paul R. Charron. The ACIEP serves the U.S. government in a solely advisory capacity, and provides advice concerning topics in international economic policy. It is expected that during this meeting, the ACIEP subcommittees on sanctions policy, investment policy, and the Stakeholder Advisory Board will provide updates on their recent work.

This meeting is open to the public, though seating is limited. Entry to the building is controlled. To obtain pre-clearance for entry, members of the public planning to attend should *no later than Monday, May 9,* provide their full name and professional affiliation to Alan Krill by email: *KrillA@state.gov.* Requests for reasonable accommodation should be made to Alan Krill before Monday, May 9. Requests made after that date will be considered, but might not be possible to fulfill.

For additional information, contact Alan Krill, Bureau of Economic and Business Affairs, at (202) 647–0812, or *KrillA@state.gov.*

Dated: April 6, 2016.

Alan Krill,

Designated Federal Officer, U.S. Department of State.

[FR Doc. 2016–08502 Filed 4–12–16; 8:45 am]

BILLING CODE 4710–AE–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, April 18, 2016 at 1:00 p.m. The meeting will be held at the Supreme Court of Kentucky in Frankfort, Kentucky. The purpose of this meeting is to consider grant applications for the 2nd quarter of FY 2016, and other business. All portions of this meeting are open to the public.

ADDRESSES: Supreme Court of Kentucky, State Capitol, Room 235, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2016–08468 Filed 4–12–16; 8:45 am]

BILLING CODE P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council; Correction

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting; correction.

SUMMARY: This is a correction to the **Federal Register** Notice regarding the location for the TVA Regional Resource Stewardship Council (RRSC) meeting on April 26, 2016 that was originally published in the **Federal Register** on April 8, 2016. This corrects the meeting location noted in the address section of the original **Federal Register** Notice.

The RRSC was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The meeting agenda includes the following:

1. Introductions
2. Updates on Natural Resources issues
3. Presentations regarding TVA Stewardship Initiatives and Reservoir Release Improvement Program
4. Public Comments
5. Council Discussion

The RRSC will hear opinions and views of citizens by providing a public comment session starting at 10:15 a.m., EDT, on Tuesday, April 26. Persons wishing to speak are requested to register at the door by 9:45 a.m. EDT on Tuesday, April 26 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–9 D, Knoxville, Tennessee 37902.

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[46] 20 CFR 401.55.

DATES: The public meeting will be held on Tuesday, April 26, from 8:30 a.m. to 2:30 p.m. EDT.

ADDRESSES: The meeting will be held at the Chattanoogan Hotel, 1201 South Broad Street, Chattanooga, Tennessee 37402, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Beth Keel, 400 West Summit Hill Drive, WT–9 D, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: April 8, 2016.

Joseph J. Hoagland,

Vice President, Stakeholder Relations, Tennessee Valley Authority.

[FR Doc. 2016–08592 Filed 4–11–16; 11:15 am]

BILLING CODE 8120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aerospace Fuel, Engine Oil, and Hydraulic Hose Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the Federal Aviation Administration's (FAA) intent to cancel the following Technical Standard Orders (TSOs): –C42, Propeller Feathering Hose Assemblies; –C53c, Fuel and Engine Oil System Hose Assemblies; and –C75, Hydraulic Hose Assemblies. The intent is to combine the updated requirements of the aforementioned TSOs into TSO–C140, Aerospace Fuel, Engine Oil, and Hydraulic Hose Assemblies. The impact of cancelling these TSOs will not affect current design or production approvals for an existing TSO–C42, –C53c, or –C75 authorization (TSOA). However, modifications to TSO–C42, –C53c, and –C75 TSOAs will no longer be accepted after the effective cancellation date. Generally, we will not accept applications for the previous revisions after the cancellation date of these TSOs. We may do so, however, up to six months after publication of this cancellation notice if we know that work was being done against the prior minimum performance standard before the cancellations became effective. Articles approved under those cancelled TSOAs may continue to be produced under the provisions of their original approvals.

DATES: Comments must be received on or before May 13, 2016.

FOR FURTHER INFORMATION CONTACT: Jim Kabbara, AIR–133, Federal Aviation Administration, 950 L'Enfant Plaza, 5th floor, Washington, DC 20024. Telephone (202) 267–1612 or email at: *jim.kabbara@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed cancellation of the TSOs by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date at the above address, weekdays except federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date.

Background

A recent review of TSO–C140 revealed it contained all the updated requirements of TSOs –C42, –C53c, and –C75, each of which are in need of an update. As such, we believe that the proposed cancellation does not impose any new requirements and will have no burden on the aviation community.

Issued in Washington, DC.

Susan J.M. Cabler,

Acting Manager, Design, Manufacturing, & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2016–08421 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Request to Release Airport Property at the Humboldt Municipal Airport, Humboldt, Iowa.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Humboldt Municipal, Humboldt, Iowa, under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before May 13, 2016.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Humboldt Airport Commission, Dave Dodgen, City of Humboldt 29 Fifth Street South, Humboldt, IA 50548, 515–332–3435.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.* The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 1.42 acres of airport property at the Humboldt Municipal Airport (0K7) under the provisions of 49 U.S.C. 47107(h)(2). On January 18, 2016, the Airport Commission at the Humboldt Municipal Airport requested from the FAA that approximately 1.42 acres of property be released for sale to B&N Auto for dual use as a farming rental in the summer and snow storage in the winter. On March 10, 2016, the FAA determined that the request to release property at the Humboldt Municipal Airport (0K7) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice. The following is a brief overview of the request:

Humboldt Municipal Airport (0K7) is proposing the release of one parcel, of 1.42 acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Humboldt Municipal Airport (0K7) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the Humboldt Municipal Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Humboldt Municipal Airport.

Issued in Kansas City, MO, on April 7, 2016.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2016–08507 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent for an Environmental Impact Statement for the Kake Access Project in Southeast Alaska

AGENCY: Federal Highway Administration, Department of Transportation.

ACTION: Notice to rescind a Notice of Intent for an Environmental Impact Statement.

SUMMARY: A Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** on January 22, 2013. The FHWA is issuing this notice to advise the public that FHWA and the Alaska Department of Transportation and Public Facilities (ADOT&PF) will no longer prepare an EIS for the Kake Access project. The purpose of the Kake Access project was to provide Kake residents with more frequent, faster and cost effective surface transportation access to medical facilities, goods and services, education facilities, and economic opportunities not available in Kake.

FOR FURTHER INFORMATION CONTACT: Mike Traffalis, Project Manager, Federal Highway Administration-Western Federal Lands, 610 E. 5th St., Vancouver, WA 98661. 360–619–7700.

SUPPLEMENTARY INFORMATION: The 2004 Southeast Alaska Transportation Plan (SATP) identified the need to improve the transportation system between communities in southeast Alaska. One improvement includes providing local access between the community of Kake and a major transportation and commercial hub. The 2012 Alaska Legislature appropriated $40 million to ADOT&PF for construction of a roadway connecting the communities of Kake and Petersburg.

On January 22, 2013, FHWA issued a Notice of Intent (NOI) to advise the public that it intended to prepare an EIS for a proposed transportation project to improve access to and from the community of Kake (**Federal Register** Volume 78, Number 14). The Western Federal Lands Highway Division of FHWA was the lead Federal agency for the project. A draft purpose and need statement was prepared in June 2013. Scoping meetings were held on the purpose and need statement and preliminary alternatives. Following the public meeting, FHWA and ADOT&PF determined that the purpose and need statement should be better defined.

To refine the project's purpose and need statement, a public phone survey and a transportation needs assessment were completed to provide more information about current travel patterns between Kake and surrounding communities. The needs assessment summarized prior work on the Kake Access Project, analyzed travel patterns, documented perceptions of project benefits and potential negative effects, and estimated potential annual average daily traffic counts for round trips between Kake and Petersburg. Public meetings were held in Kake and Petersburg in March 2014 to present the results and to give residents an opportunity to provide input and ask questions about the proposed project. A revised purpose and need statement was drafted in May 2015. The FHWA and ADOT&PF studied project alternatives and began narrowing down the list to a reasonable range of alternatives to be analyzed in the EIS. Public meetings were held in Kake and Petersburg in September 2015 and another public survey was completed November 2015 through January 2016 to collect public input on the project.

In February 2016, ADOT&PF decided to close the Kake Access project. The principal factors supporting the decision to close the project is that the Federal project is not fully funded and the need to operate and maintain a shuttle ferry would add significantly to ADOT&PF's annual maintenance and operating expense.

The purpose of this notice is to rescind the January 22, 2013 NOI to prepare an EIS for the Kake Access project.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: April 7, 2016.

Sandra L. Otto,

Division Director, Western Federal Lands Highway Division, Federal Highway Administration.

[FR Doc. 2016–08456 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, U.S. Department of Transportation.

ACTION: Notice; correction.

SUMMARY: This document corrects the docket number in a **Federal Register** notice published on Friday, December 4, 2015, that announced a request for public comment on proposed collection of information.

FOR FURTHER INFORMATION CONTACT: Walter Culbreath, U.S. Department of Transportation, NHTSA, Room W51–316, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Culbreath's telephone number is (202) 366–1566.

Correction

In the **Federal Register** of December 4, 2015, in FR Doc. NHTSA–2015–0115, on page 75894, column 2 needs to read:

(1) OMB Control Number: 2127–0003.

Kevin Mahoney,

Director, Office of IT Services.

[FR Doc. 2016–08405 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0121]

Developing Evidence Based Fatigue Risk Management Guidelines for Emergency Medical Services: First Expert Panel Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is announcing the first in a series of expert panel meetings to develop evidence based guidelines for fatigue management in the Emergency Medical Services (EMS) community. This meeting will focus on generating research questions germane to fatigue mitigation in EMS settings as well as inclusion criteria for the evidence based guideline literature review. Members of the public are encouraged to attend the meeting and make comments about the topic during times set aside specifically

for this purpose. Due to space limitations, attendance at the meeting is limited to invited participants and those who register in advance at *www.emsfatigue.org.* Written comments can also be made on *http://www.regulations.gov* (Docket No. NHTSA–2015–0121).

DATES: The meeting will be held on April 26th, 2016 from 8:00 a.m. to 5:30 p.m. and April 27th, 2016 from 8:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held in the Conference Center of the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. J. Stephen Higgins, Telephone: 202–366–3976; email address: *james.higgins@dot.gov.*

SUPPLEMENTARY INFORMATION: NHTSA recently announced its new initiative with the National Association of State EMS Officials (NASEMSO) to develop evidence based voluntary fatigue risk management guidelines and resources tailored to the EMS occupation. NHTSA has already held one stakeholder meeting (February 2, 2016) where the project team and subject matter experts presented on the potential dangers of fatigued driving and the work of EMS practitioners, a summary of the project goals and methods for coming to consensus on EBG fatigue risk management guidelines, the plan for dissemination of EBGs, and additional project related activities and information. A majority of the time in the meeting was set aside to accept questions and comments from attendees and NHTSA heard a number of suggestions. These suggestions will feed into the current panel meeting and will help direct the development of research questions and the eventual evidence based fatigue management guidelines.

The goal of the first panel meeting will be to generate research questions germane to fatigue mitigation in EMS settings as well as inclusion criteria for the evidence based guideline literature review. The tentative agenda topics are as follows:

- Background on Fatigue in EMS and our approach to EBG development
- Overview of the GRADE methodology
- Expert Panel & Research Team presentations
- Panel Discussion
- Public Comment

Due to space limitations, attendance at the meeting is limited to invited participants and those who register in advance. All attendees must bring government issued identification to gain admittance to the DOT Building and should arrive at least 30 minutes in advance of the meeting to have sufficient time to clear DOT security. Those who do not register in advance may not be able to attend because of limited space in the DOT Conference Center. To register please visit *www.emsfatigue.org* or contact Dr. Higgins by phone: 202–366–3976 (web registration preferred).

Public Comment: Members of the public are encouraged to comment either in person at the meeting or at *http://www.regulations.gov.* In order to allow as many people as possible to provide comments at the meeting, speakers are requested to limit their remarks to 5 minutes. You may submit written comments identified by DOT Docket ID Number NHTSA–2015–0121 using any of the following methods:

Electronic submissions: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Fax: 1–(202) 493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Authority: 49 U.S.C. 30182; 23 U.S.C. 403.

Issued in Washington, DC, on April 8, 2016.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2016–08464 Filed 4–12–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for applications.

SUMMARY: The Internal Revenue Service (IRS) requests applications of individuals to be considered for selection as members of the Internal Revenue Service Advisory Council (IRSAC). Nominations should describe and document the proposed member's qualification for IRSAC membership, including the applicant's knowledge of Circular 230 regulations and the applicant's past or current affiliations and dealings with the particular tax segment(s) of the community that the applicant wishes to represent on the Council. Applications will be accepted from qualified individuals and from professional and public interest groups that wish to have representatives on the IRSAC. The IRSAC is comprised of up to thirty-five (35) members. Applications are currently being accepted for approximately four appointments that will begin in January 2017. It is important that the IRSAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications as well as areas of expertise, geographic diversity, major stakeholder representation and customer segments.

The Internal Revenue Service Advisory Council (IRSAC) provides an organized public forum for IRS officials and representatives of the public to discuss relevant tax administration issues. The Council advises the IRS on issues that have a substantive effect on federal tax administration. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or recommends policies with respect to emerging tax administration issues. The IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the IRS with respect to issues having substantive effect on federal tax administration.

DATES: Written applications will be accepted from May 2, 2016 through June 24, 2016.

ADDRESSES: Applications should be submitted to the Internal Revenue Service, National Public Liaison, CL:NPL:P, Room 7559 IR, 1111 Constitution Avenue NW., Washington, DC 20224, Attn: Ms. Anna Millikan. Applications may also be submitted via email to *publicliaison@irs.gov* or fax to 855–811–8021. Application packages are available on the IRS Web site's Tax Professionals' page, *http://www.irs.gov/for-tax-pros.*

FOR FURTHER INFORMATION CONTACT: Ms. Anna Millikan, 202–317–6851 (not a toll-free number).

SUPPLEMENTARY INFORMATION: IRSAC was authorized under the Federal Advisory Committee Act, Public Law

92–463., the first Advisory Group to the Commissioner of Internal Revenue—or the Commissioner's Advisory Group ("CAG")—was established in 1953 as a "national policy and/or issue advisory committee." Renamed in 1998, the Internal Revenue Service Advisory Council (IRSAC) reflects the agency-wide scope of its focus as an advisory body to the entire agency. The IRSAC's primary purpose is to provide an organized public forum for senior IRS executives and representatives of the public to discuss relevant tax administration issues.

Conveying the public's perception of IRS activities, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds on the Council's activities. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, international, wage and investment taxpayers and the knowledge of Circular 230.

IRSAC members are appointed by the Commissioner of the Internal Revenue Service with the concurrence of the Secretary of the Treasury to serve a three-year term. IRSAC may form subcommittees (or subgroups) for any purpose consistent with the charter. These subcommittees must report directly to the IRSAC parent committee.

Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation to and from airports, train stations, etc., are reimbursed within prescribed federal travel limitations.

All applicants will be sent an acknowledgment of receipt. In accordance with the Department of Treasury Directive 21–03, a clearance process, including annual tax checks and a practitioner check with both the IRS Return Preparer Office and the Office of Professional Responsibility, will be conducted. In addition, all applicants deemed "Best Qualified" shall undergo a Federal Bureau of Investigation (FBI) fingerprint check. Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities are adequately represented on advisory committees. Therefore, the IRS extends particular encouragement to nominations from such appropriately-qualified candidates.

Dated: April 8, 2016.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. 2016–08490 Filed 4–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW., Washington, DC, on May 3, 2016 at 11:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: April 6, 2016.

Fred Pietrangeli,

Director for Office of Debt Management.

[FR Doc. 2016–08285 Filed 4–12–16; 8:45 am]

BILLING CODE 4810–25–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 71 April 13, 2016

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 205
National Organic Program; Organic Livestock and Poultry Practices; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–15–0012; NOP–15–06PR]

RIN 0581–AD44

National Organic Program; Organic Livestock and Poultry Practices

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) proposes to amend the organic livestock and poultry production requirements by: adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expanding and clarifying existing requirements covering livestock health care practices and mammalian living conditions.

DATES: Comments must be received by June 13, 2016.

ADDRESSES: Interested parties may submit written comments on this proposed rule using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Paul Lewis Ph.D., Director Standards Division, National Organic Program, USDA–AMS–NOP, Room 2646-So., Ag Stop 0268, 1400 Independence Ave. SW., Washington, DC 20250–0268.

Instructions: All submissions received must include the docket number AMS–NOP–15–0012; NOP–15–06PR, and/or Regulatory Information Number (RIN) 0581–AD44 for this rulemaking. Commenters should identify the topic and section of the proposed rule to which their comment refers. All commenters should refer to the GENERAL INFORMATION section for more information on preparing your comments. All comments received will be posted without change to *http://www.regulations.gov.*

Docket: For access to the docket, including background documents and comments received, go to *http://www.regulations.gov.* Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2646-South Building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Ph.D., Director of Standards Division, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Purpose of Proposed Rule

This proposed rule would create greater consistency in organic livestock practices. AMS has determined that the current USDA organic regulations (7 CFR part 205) covering livestock health care practices and living conditions need additional specificity and clarity to better ensure consistent compliance by certified organic operations and to provide for more effective administration of the National Organic Program (NOP) by AMS. One purpose of the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6522) is to assure consumers that organically produced products meet a consistent and uniform standard (7 U.S.C. 6501). By facilitating improved compliance and enforcement of the USDA organic regulations, the proposed regulations would better satisfy consumer expectations that organic livestock meet a uniform and verifiable animal welfare standard.

Specifically, this proposed action would:

1. Clarify how producers and handlers must treat livestock and poultry to ensure their health and wellbeing.
2. Clarify when and how certain physical alterations may be performed on organic livestock and poultry in order to minimize stress. Additionally, some forms of physical alterations would be prohibited.
3. Set maximum indoor and outdoor stocking density for avian species, which would vary depending on the type of production and stage of life.
4. Define outdoor access to exclude the use of structures with solid roofing for outdoor access and require livestock and poultry to have contact with soil.
5. Add new requirements for transporting livestock and poultry to sale or slaughter.
6. Clarify the application of USDA Food Safety and Inspection Service (FSIS) requirements regarding the handling of livestock and poultry in connection with slaughter to certified organic livestock and poultry establishments and provide for the enforcement of USDA organic regulations based on FSIS inspection findings.

B. Summary of Provisions

This proposed rule would provide specificity on livestock health care practices, such as which physical alteration procedures are prohibited or restricted for use on organic livestock. The proposed livestock health care practice standards include requirements for euthanasia to reduce suffering of any sick or disabled livestock. To improve upon the current standards, this proposed rule would set separate standards for mammalian and avian livestock living conditions to better reflect the needs and behaviors of the different species, as well as related consumer expectations. The proposed mammalian livestock standards would cover both ruminants and swine. The proposed avian living standards would set maximum indoor and outdoor stocking densities to ensure the birds have sufficient space to engage in natural behaviors. This proposed rule would add new requirements on the transport of organic livestock to sale or slaughter. This proposed rule would also add a new section to clarify how organic slaughter facility practices and FSIS regulations work together to support animal welfare.

C. Costs and Benefits

AMS estimates the following costs and benefits of this proposed rule.

Costs	Benefits
Production: $9.5–24.1 million per year (annualized over 13 years) Paperwork burden: $3.6 million annually.	Qualitative: Establishes a clear standard protecting the value of the USDA organic seal to consumers. Facilitates level enforcement of organic livestock and poultry standards.

Costs	Benefits
	Quantitative: $14.7–62.6 million per year (annualized over 13 years).

Table of Contents

I. General Information
  A. Does this action apply to me?
  B. What should I consider as I prepare my comments for AMS?
II. Background
  A. Current Organic Livestock Standards
  B. NOSB Recommendations
  C. AMS Policy
  D. Related Issues
III. Overview of Proposed Amendments
  A. Livestock Health Care Practice Standard
  B. Mammalian Living Conditions
  C. Avian Living Conditions
  D. Transport to Sale and Slaughter
  E. Slaughter Requirements
  F. Other Amendments Considered
IV. Related Documents
V. Statutory and Regulatory Authority
  A. Executive Order 12866 and 13563
  i. Need for the Rule
  ii. Baseline
  iii. Alternatives Considered
  iv. Costs of Proposed Rule
  v. Benefits of Proposed Rule
  vi. Conclusions
  B. Executive Order 12988
  C. Regulatory Flexibility Act
  D. Executive Order 13175
  E. Paperwork Reduction Act
  F. Civil Rights Impact Analysis

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are engaged in the meat, egg, poultry, dairy, or animal fiber industries. Potentially affected entities may include, but are not limited to:

- Individuals or business entities that are considering organic certification for a new or existing livestock farm or slaughter facility.
- Existing livestock farms and slaughter facilities that are currently certified organic under the USDA organic regulations.
- Certifying agents accredited by USDA to certify organic livestock operations and organic livestock handling operations.

This listing is not intended to be exhaustive, but identifies key entities likely to be affected by this action. Other types of entities could also be affected. To determine whether you or your business may be affected by this action, you should carefully examine the proposed regulatory text. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What should I consider as I prepare my comments for AMS?

Your comments should clearly indicate whether or not they support the proposed action for any or all of the items in this proposed rule. You should clearly indicate the reason(s) for the stated position. Your comments should also offer any recommended language changes that would be appropriate for your position. Please include relevant information and data to further support your position (*e.g.* scientific, environmental, industry impact information, etc.).

Specifically, AMS is requesting comments on the following topics:

1. The clarity of the proposed requirements: Can farmers, handlers, and certifying agents readily determine how to comply with the proposed regulations?

2. The accuracy of the assumptions and estimates in the Regulatory Impact Analysis and Regulatory Flexibility Analysis pertaining to organic poultry and egg production. In addition, the accuracy of AMS' assertion that the proposed requirements pertaining to mammalian livestock codify current practices among these organic producers

3. The implementation approach and timeframe. AMS is proposing that all provisions of this rule must be implemented within one year of the publication date of the final rule except for the outdoor space requirements for avian species. AMS is proposing two distinct implementation timeframes for the outdoor space requirements for poultry: (1) Three years after the publication of the final rule any non-certified facility would need to comply in order to obtain certification; (2) all facilities certified prior to that three-year mark would need to comply within five years of the publication of the final rule.

II. Background

This proposed rule addresses health care, transport, slaughter and living conditions for organic livestock. However, the provisions for outdoor access for poultry have a long history of agency and NOSB actions and are a focal issue. Outdoor access practices, particularly for organic layers, vary; some operations provide large, open-air outdoor areas, while others provide minimal outdoor space or use screened, covered enclosures commonly called "porches" to provide outdoor space. An audit in 2010 conducted by the USDA Office of the Inspector General identified inconsistencies in certification practices regarding the use of porches as outdoor space. To address that finding, AMS issued draft guidance. However, after public comment, AMS determined that rulemaking was necessary to resolve the divergent outdoor access practices for organic poultry and did not finalize the guidance. To assist with the rulemaking, the National Organic Standards Board (NOSB) developed a series of recommendations to clarify organic livestock healthcare, transport, slaughter, and living conditions, including outdoor access for poultry. The NOSB deliberation process revealed broad support within the organic community and consumer expectations for specific guidelines for animal care, including meaningful outdoor access for poultry.

A. Current Organic Livestock Standards

OFPA authorizes the establishment of national standards for the marketing of organically produced agricultural products. AMS administers the National Organic Program (NOP), which oversees the development and implementation of the national standards for the production, handling and marketing of organically produced agricultural products. Section 6509 of OFPA authorizes the USDA to implement regulations regarding standards for organic livestock products. Furthermore, OFPA authorizes the creation of the NOSB to advise USDA about the implementation of standards and practices for organic production (7 U.S.C. 6518). The NOSB is a 15-member Federal Advisory Board appointed by the Secretary of Agriculture which meets in public twice annually. OFPA specifies the composition of the NOSB and reserves four NOSB seats for producers/growers, two seats for handlers/processors. The NOSB solicits public comment on topics related to the USDA organic regulations to inform its public deliberations and decision making at the open meetings. Any NOSB recommendations to amend the USDA organic regulations must be implemented through the notice and comment rulemaking process.

The current USDA organic regulations have broad and general requirements for ensuring the welfare of certified organic livestock and poultry. These regulations accommodate various livestock production situations. For all livestock, the regulations require: an environment that allows animals to express natural behaviors; preventive health care to reduce the likelihood of illness; and protection from conditions that jeopardize an animal's well-being, such as predators and adverse weather.

The management of domesticated animals requires that they be contained in some manner, either to prevent them from running away or to protect them from harm. In organic management systems, securing animal access areas is important to ensure animals do not come into contact with prohibited substances or eat nonorganic feed. However, the degree to which animals are restrained or contained in pens, cages, paddocks, or other enclosures, may affect their ability to exercise their natural behaviors.

Consistent with organic farming principles, the USDA organic regulations require housing and living conditions that allow animals to freely exercise their natural behaviors. Natural behaviors are species-specific. Therefore, for example, the USDA organic regulations require that ruminants graze at least 120 days per year and receive 30 percent of dry matter intake from grazing. The regulations also describe situations that warrant denying ruminant animals access to pasture or the outdoors, *e.g.,* for newborn dairy cattle up to six months. This level of specificity, however, is not currently provided for avian species and some mammalian, non-ruminant livestock.

Further, certifying agents inspect each organic operation and decide whether or not to certify the operation. Certifying agents must consider site-specific conditions, including prevalent pests and diseases, weather, and natural resources of the operation when determining the acceptability of a particular management practice. This flexibility, combined with numerous combinations of environmental, cultural, and economic factors, results in variation in the manner in which the regulations are applied. For example, in organic poultry production, outdoor access ranges from extensive pasture to roofed enclosures, *i.e.,* porches with no access to soil or vegetation. This disparity in amounts of outdoor access has economic implications for producers and lessens consumer confidence in the organic label.

B. NOSB Recommendations

Between 1994 and 2011, the NOSB made nine recommendations regarding livestock health and welfare in organic production. Between 1997 and 2000, AMS issued two proposed rules and a final rule regarding national standards for the production and handling of organic products, including livestock and their products. The NOSB as well as members of the public commented on these rulemakings with regard to the health and welfare of livestock. Key actions from that period, which led to the development of the existing standards on organic livestock, are summarized below.

(1) In June 1994, the NOSB recommended a series of provisions to address the care and handling of livestock on organic farms. Within this recommendation, the NOSB developed much of the framework for organic care and welfare of animals, including health care standards, living conditions and transportation of livestock practices.

(2) In April and October 1995, the NOSB made a series of recommendations as addendums to the June 1994 recommendations. These recommendations further addressed various health care practices, a requirement for outside access, and the use of vaccines.

(3) On December 16, 1997, AMS responded to the 1994 and 1995 NOSB recommendations in a proposed rule to establish the NOP (62 FR 65850). Consistent with the NOSB's recommendation, the proposed language would have required that organic livestock producers develop a preventive health care plan and use synthetic drugs only if preventive measures failed. The 1997 proposed rule also included standards for livestock living conditions, including when animals would be permitted to be confined. This proposed rule was not finalized.

(4) In March 1998, the NOSB reaffirmed its earlier recommendations on animal health care and living conditions. The 1998 NOSB recommendation also stressed the importance of treating sick livestock by recommending that any organic producer who did not take specified actions to provide care for a diseased animal would lose certification. This recommendation also included provisions to clarify when livestock could be confined indoors and defined "outdoors" as having direct access to sunshine.

(5) On March 13, 2000, AMS published a second proposed rule to establish the National Organic Program (65 FR 13512). AMS responded to the NOSB's March 1998 recommendation on animal health care and living conditions in this proposed rule. AMS proposed that organic producers must use disease prevention practices first, then approved synthetic medications only if preventive measures failed. However, a producer would need to use all appropriate measures to save the animal even if the animal lost organic status. In addition, AMS proposed that the living conditions for organic livestock must maintain the health of the animals and allow for natural behaviors, including access to the outdoors.

(6) On December 21, 2000, AMS published a final rule establishing the USDA organic regulations (65 FR 80548). Through this action, AMS finalized the standards for health care practices and livestock living conditions. That rule became effective on February 20, 2001, and was fully implemented on October 21, 2002.

(7) In May 2002, the NOSB again addressed outdoor access, stating this should include open air and direct access to sunshine.[1] In addition, the May 2002 recommendation stated that bare surfaces other than soil do not meet the intent of outdoor access for poultry. This recommendation also included clarifications as to when livestock could be temporarily confined.

(8) In March 2005, the NOSB recommended that the temporary confinement provision for "stage of production" be changed to "stage of life."[2] The NOSB reasoned that "stage of life" would more appropriately allow livestock to be temporarily confined even if they were not producing milk or eggs at the time of confinement.

(9) On October 24, 2008, AMS published a proposed rule on access to pasture for ruminant livestock (73 FR 63584). AMS published the final rule, Access to Pasture (Livestock) (75 FR 7154), on February 17, 2010 (75 FR 7154). This rule was based on several NOSB recommendations regarding ruminant livestock feed and living conditions. This rule set a requirement that ruminants obtain a minimum of 30 percent dry matter intake from grazing during the grazing season.

(10) Between 2009 and 2011, the NOSB issued a series of

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[1] NOSB, 2002. Recommendation Access to Outdoors for Poultry. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[2] NOSB, 2005. Formal Recommendation by the NOSB to the NOP. NOSB recommendation for Rule change—"Stage of Production" to "Stage of Life." Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

recommendations on animal welfare. These were intended to incorporate prior NOSB recommendations that AMS had not addressed. The November 2009 recommendation suggested revisions and additions to the livestock health care practice standards and living conditions standards.[3] The NOSB recommended banning or restricting certain physical alterations and requiring organic producers to keep records on animals which were lame and/or sick and how they were treated. This recommendation proposed to separate mammalian living conditions from avian living conditions sections of the USDA organic regulations so that the provisions could be more directly tailored to various livestock species. In the mammalian section, the NOSB proposed mandatory group housing of swine and a requirement for rooting materials for swine. In the avian section, the NOSB proposed a variety of provisions, including maximum ammonia levels, perch space requirements and outdoor access clarifications.

(11) In October 2010, the NOSB passed a recommendation on the use of drugs for pain relief.[4] The NOSB recommended changing the health care practice standards to allow the administration of drugs in the absence of illness to prevent disease or alleviate pain. The NOSB stated that such a change would improve the welfare of organic livestock.

(12) In December 2011, the NOSB passed an additional animal welfare recommendation.[5] The 2011 recommendation added definitions for terms related to livestock production and provisions for health care standard and living conditions. The NOSB also revised its prior recommendation on physical alterations to provide a more inclusive list of banned procedures. In the mammalian living conditions section, the NOSB recommended that outdoor access for swine include a minimum of 25 percent vegetative cover at all times. For avian species, the NOSB recommended specific indoor and outdoor space requirements, *e.g.*, stocking densities, among other provisions for living conditions specific to poultry. For layers, the NOSB recommended a minimum of 2.0 ft^{2} per bird indoors and outdoors.

(13) In December 2011, the NOSB passed a separate recommendation to add standards for transportation of livestock to slaughter facilities and the slaughter process.[6] The NOSB's recommendation for transport included provisions for veal calves and the trailers/trucks used to transport animals to ensure continuous organic management. The NOSB recommended that slaughter facilities must meet certain performance-based standards assessed via observations of animal handling and any slips, falls or vocalizations before and during slaughter.

C. AMS Policy

On October 29, 2002, AMS issued a memorandum to clarify outdoor access and temporary confinement requirements for livestock under the USDA organic regulations.[7] The memorandum stated that producers are required to balance accommodations for an animal's health and natural behavior with measures to ensure an animal's safety and well-being. The memorandum further explained that the USDA organic regulations do not specify an outdoor space allowance or stocking rate, nor do they require that all animals in the herd or flock have access to the outdoors at the same time. This memorandum explained how producers could provide evidence of compliance to support temporary confinement. This memorandum was incorporated into the NOP Handbook on January 31, 2011, and is retained as current policy.

On February 17, 2010, AMS published a final rule on Access to Pasture (Livestock). The final rule was in response to the 2005 NOSB recommendation and extensive public input requesting clear outdoor access requirements for ruminant livestock. The final rule established that ruminants obtain at least 30 percent dry matter intake from grazing during the grazing season. The rule provided clarity to correct inconsistent application and enforcement of the outdoor access provisions for ruminant livestock.

In March 2010, the USDA Office of the Inspector General (OIG) issued a report concerning, in part, AMS guidance on outdoor access for organic livestock.[8] The OIG found inconsistent certification practices regarding outdoor access for poultry. The OIG recommended that AMS issue guidance on outdoor access for livestock and poultry.

On October 13, 2010, AMS published draft guidance, Outdoor Access for Organic Poultry, for public comment.[9] The draft guidance advised certifying agents to use the 2002 and 2009 NOSB recommendations as the basis for certification decisions regarding outdoor access for poultry.[10] The draft guidance informed certifying agents and producers that maintaining poultry on soil or outdoor runs would demonstrate compliance with the outdoor access requirement in § 205.239.

AMS received 69 comments on the draft guidance. Comments varied widely. Some supported more specific and stringent stocking densities and soil-based outdoor access, citing animal health and environmental benefits. Other comments favored maintaining an allowance for porches as acceptable outdoor access, citing biosecurity and animal health concerns.

Commenters stated that the draft guidance was unenforceable and would not ensure year-round outside access for poultry. These commenters suggested a minimum stocking rate of 1.75 square feet per bird in henhouses that also provide access to perches, with an additional 5 square feet per bird available in vegetated outdoor runs, which should be accessible to all birds at the same time. A number of commenters, including poultry producers, supported outdoor access on soil, pasture or other vegetation, and described health benefits and protection of the environment that a pasture or other vegetated outdoor access area would afford.

One trade association, some organic egg producers, and consultants described the use of production systems that limit outdoor access via the use of enclosed porches so that poultry are not in contact with soil or pasture. These commenters described the benefits of these systems: Protection from predation, pathogens that cause food safety problems, exposure to parasites, and contact with wild birds that could carry diseases. The commenters asserted that these systems are consistent with the 2002 NOSB recommendation. They noted that organic egg producers have made substantial investments in facilities with porches. Some also expressed concerns that placing birds on soil would affect their ability to comply with the Food and Drug Administration's salmonella prevention food safety regulations (21 CFR part 118). Several producers expressed concern with the 2009 NOSB recommendation that pullets be given outdoor access at 6 weeks of age, because pullets are not fully immunized (including for protection against salmonella) until 16 weeks of age, and should not be exposed to uncontrolled environments until that time.

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[3] NOSB, 2009. Formal Recommendation by the NOSB to the NOP, Animal Welfare. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[4] NOSB, 2010. Formal Recommendation by the NOSB to the NOP, Clarification of 205.238(c)(2). Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[5] NOSB, 2011. Formal Recommendation by the NOSB to the NOP, Animal Welfare and Stocking Rates. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[6] NOSB, 2011. Formal Recommendation by the NOSB to the NOP, Animal Handling and Transport to Slaughter. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[7] National Organic Program, 2002. Access to the Outdoors for Livestock. Retained as Policy Memo 11–5. Available in the NOP Handbook: *http://www.ams.usda.gov/rules-regulations/organic/handbook.*

[8] USDA, Office of the Inspector General. March 2010. Audit Report 01601–03–Hy, Oversight of the National Organic Program. Available at: *http://www.usda.gov/oig/rptsauditsams.htm.*

[9] On October 13, 2010, AMS also published a Notice of Availability of Draft Guidance and Request for Comments in the **Federal Register** (75 FR 62693).

[10] The 2002 and 2009 NOSB recommendations included daily outdoor access from an early age and access to direct sunlight, open air and soil.

Given the comments and the request for rulemaking, AMS determined to pursue rulemaking to clarify outdoor access for poultry and did not finalize the draft guidance. Because the current regulations permit a range of practices for providing outdoor access for livestock, AMS could not enforce a narrower interpretation through guidance or additional training for certifying agents. Instructing certifiers to compel compliance with requirements that are more specific than the regulations could only be resolved through rulemaking.

D. Related Issues

Some organic poultry operations provide outdoor access through porches. These porch systems proliferated after a 2002 AMS administrative appeal decision ordering the certification of an operation that provided porches exclusively for outdoor access. If finalized, this rule would supersede the 2002 appeal decision.

On July 15, 2002, an operation applied for organic certification of its egg laying operation with a USDA accredited certifying agent. As part of the application, the operation's Organic System Plan (OSP) stated that outdoor access would be provided through covered and screened porches. The certifying agent denied certification for failure to provide hens with access to the outdoors. The certifying agent stated that a porch did not provide outdoor access as required by the USDA organic regulations. The operation appealed the Denial of Certification to the AMS Administrator on October 22, 2002. The Administrator determined that poultry porches could be allowed because the regulations do not specify outdoor space requirements. The appeal was sustained on October 25, 2002, and the certifying agent was directed to grant organic certification to the operation retroactively to October 21, 2002.

The certifying agent objected to the Administrator's decision and appealed to the USDA Office of the Administrative Law Judge (ALJ). On November 4, 2003, the USDA ALJ dismissed the appeal. On December 11, 2003, the certifying agent appealed to the USDA Judicial Officer. On April 21, 2004, the USDA Judicial Officer dismissed the appeal. On September 27, 2005, the certifying agent filed an appeal with the U.S. District Court, District of Massachusetts. On March 30, 2007, the U.S. District Court dismissed the case for lack of standing (*Massachusetts Independent Certification, Inc* v. *Johanns.* 486 F.Supp.2d 105).

III. Overview of Proposed Amendments

A. Definitions in § 205.2

Section title	Current wording	Type of action	Proposed action
205.2	Terms Defined.		
205.2	N/A	New term	Beak trimming. The removal of the curved tip of the beak.
205.2	N/A	New term	Caponization. Castration of chickens, turkeys, pheasants and other avian species.
205.2	N/A	New term	Cattle wattling. The surgical separation of two layers of the skin from the connective tissue along a 2 to 4 inch path on the dewlap, neck or shoulders used for ownership identification.
205.2	N/A	New term	De-beaking. The removal of more than the beak tip.
205.2	N/A	New term	De-snooding. The removal of the turkey snood (a fleshy protuberance on the forehead of male turkeys).
205.2	N/A	New term	Dubbing. The removal of poultry combs and wattles.
205.2	N/A	New term	Indoors. The flat space or platform area which is under a solid roof. On each level the animals have access to food and water and can be confined if necessary. Indoor space for avian species includes, but is not limited to: Pasture housing. A mobile structure for avian species with 70 percent perforated flooring. Aviary housing. A fixed structure for avian species which has multiple tiers/levels with feed and water on each level. Slatted/mesh floor housing. A fixed structure for avian species which has both: (1) A slatted floor where perches, feed and water are provided over a pit or belt for manure collection; and (2) litter covering the remaining solid floor. Floor litter housing. A fixed structure for avian species which has absorbent litter covering the entire floor.
205.2	N/A	New term	Mulesing. The removal of skin from the buttocks of sheep, approximately 2 to 4 inches wide and running away from the anus to the hock to prevent fly strike.
205.2	N/A	New term	Outdoors. Any area in the open air with at least 50 percent soil, outside a building or shelter where there are no solid walls or solid roof attached to the indoor living space structure. Fencing or netting that does not block sunlight or rain may be used as necessary.
205.2	N/A	New term	Perch. A rod or branch type structure that serves as a roost and allows birds to utilize vertical space in the house.
205.2	N/A	New Term	Pullet. A female chicken or other avian species being raised for egg production that has not yet started to lay eggs.
205.2	N/A	New term	Roost. A flat structure over a manure pit that allows birds to grip with their toes as they would on a perch.
205.2	N/A	New term	Soil. The outermost layer of the earth comprised of minerals, water, air, organic matter, fungi and bacteria in which plants may grow roots.
205.2	N/A	New term	Stocking density. The weight of animals on a given unit of land at any one time.

Section title	Current wording	Type of action	Proposed action
205.2	N/A	New term	Toe clipping. The removal of the nail and distal joint of the back two toes of a male bird.

AMS is proposing to add fifteen new terms to § 205.2: Beak trimming, caponization, cattle wattling, de-beaking, de-snooding, dubbing, indoors, mulesing, outdoors, perch, pullet, roost, soil, stocking density and toe clipping.

AMS is proposing to prohibit several physical alterations on organic livestock. AMS is proposing to define eight terms, below, related to these physical alterations so that certifying agents and producers may ensure that they do not inadvertently perform a prohibited physical alteration which may be known by a different name locally.

Beak trimming would be defined as the removal of the curved tip of the beak.

Caponization would be defined as the castration of chickens, turkeys, pheasants and other avian species.

Cattle wattling would be defined as the surgical separation of two layers of the skin from the connective tissue along a 2 to 4 inch path on the dewlap, neck, or shoulders used for ownership identification.

De-beaking would be defined as the removal of more than the beak tip.

De-snooding would be defined as the removal of the turkey snood (a fleshy protuberance on the forehead of male turkeys).

Dubbing would be defined as the removal of poultry combs and wattles.

Mulesing would be defined as the removal of skin from the buttocks of sheep, approximately 2 to 4 inches wide and running away from the anus to the hock to prevent fly strike.

Toe clipping would be defined as the removal of the nail and distal joint of the back two toes of a male bird.

AMS is proposing to define "outdoors" to add more specificity to the existing requirement in the livestock living conditions section (7 CFR 205.239(a)(1)) that livestock have access to the outdoors. "Outdoors" would be defined as any area in the open air with at least 50 percent soil, outside a building or shelter where there are no solid walls or solid roof attached to the indoor living space structure. Fencing or netting that does not block sunlight or rain may be used as necessary. Consistent with the NOSB recommendation, this definition would exclude porches and other structures attached to the indoor living space as outdoor areas. For biosafety and animal welfare purposes, fencing or overhead netting that does not block sunlight or rain would be permitted to prevent predators and other wild birds from entering the outdoor area.

Structures for shade are permitted in the outdoor space. The area within a standalone, roofed, shade structure could be included as outdoor space area, provided it is not attached to the indoor space structure. Roofed areas attached to the building are not considered outdoor areas. This is consistent with the 2011 NOSB recommendation that stated that covered porches should not be considered outdoor access. This is also consistent with FDA's draft guidance on outdoor access under the FDA Prevention of Salmonella Enteritidis in Shell Eggs regulations[11] which states that covered porches are part of the poultry house. Many producers use portable or permanent shade structures throughout their pastures. The area under these shade structures, as long as it is not attached to the structure used for indoor access, could be an allowed area under the outdoor access space requirement. The area under the eaves or under structures attached to the indoor space structure is not to be calculated as outdoor space area to ensure that porches and similar structures are not construed as outdoor space.

The proposed definition of "outdoors" would specify that outdoor areas for all livestock have access to the soil. This supports natural behaviors across species. For example, soil-based outdoor access will encourage rooting and wallowing among swine and dust bathing and foraging among poultry.

AMS is proposing to define "soil" as the outermost layer of the earth comprised of minerals, water, air, organic matter, fungi, and bacteria, in which plants may grow roots. Livestock producers must include contact with soil when providing outdoor access to livestock in a manner that maintains and improves natural resources.

AMS is proposing to define "stocking density" as the maximum weight of animals on a given unit of land at any one time. Specifically, the minimum outdoor space requirements for poultry are based on stocking density as measured by the maximum pounds of bird on a square foot of land at a given time. AMS also considered basing the stocking density requirements on the minimum area per bird (*i.e.*, square feet per animal). AMS proposes to measure stocking density using weight to compensate for different-sized avian species (chickens, turkeys) and varieties (*e.g.*, different breeds of layers). Stocking density would be calculated on the given size of the outdoor land to which the birds are provided access. As an example, if one acre of land is divided into two half acre parcels and the birds are rotated between the two parcels, then the stocking density would be calculated using the one-half acre to which the birds have access.

AMS is proposing to define "indoors" as the flat space or platform area under a solid roof where the animals have access to both food and water and can be confined if necessary. Indoor space would be calculated by adding the square footage of the following roofed areas: (1) Ground level, which may have perches embedded or placed on the ground; (2) multi-level platforms, which provide water and feed on each elevation from which the birds can freely access the outdoors; (3) porches, which are accessible to the birds at all times. Space in porches may not be included in the calculation for indoor space if the doors are closed due to inclement weather or threat of diseases.

AMS is further clarifying the indoor living space requirements by defining several elements that will need to be included in that area. This proposal would define a "perch" as a rod- or branch-type structure that serves as a roost and allows birds to utilize vertical space in the house. This proposal would define a "roost" as a flat structure over a manure pit that allows birds to grip with their toes as they would on a perch.

AMS is proposing to define "pullet" as a female chicken or other avian species being raised for egg production that has not yet started to lay eggs. While pullet is sometimes used to describe young broilers which are used for meat production, AMS is using the term pullet to describe females of avian species which are being raised to produce eggs in the future but have not yet reached sexual maturity and have not begun producing eggs. Once avian females begin laying eggs, AMS refers to them as layers. AMS modified the definition of pullet, which is used by the AMS Livestock, Poultry and Seed Program, to include species other than chickens.

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[11] Draft Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation (Layers with Outdoor Access) *http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/eggs/ucm360028.htm.*

B. Livestock Health Care Practice Standard

Section title	Current wording	Proposed action	Proposed wording
205.238	Livestock Health Care Practice Standard	No Change.	
205.238(a)	(a) The producer must establish and maintain preventive livestock health care practices, including:	No change.	
205.238(a)(1)	(1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites;	No change.	
205.238(a)(2)	(2) Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, protein and/or amino acids, fatty acids, energy sources, and fiber (ruminants);	Revision	(2) Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, protein and/or amino acids, fatty acids, energy sources, and fiber (ruminants), resulting in appropriate body condition.
205.238(a)(3)	(3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites;	No change.	
205.238(a)(4)	(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species;	No change.	
205.238(a)(5)	(5) Performance of physical alterations as needed to promote the animal's welfare and in a manner that minimizes pain and stress; and	Revision	(5) Physical alterations may be performed to benefit the welfare or hygiene of the animals, or for identification purposes or safety. Physical alterations must be performed on livestock at a reasonably young age, with minimal stress and pain and by a competent person.
205.238(a)(5)(i)		New	(i) The following practices may not be routinely used and must be used only with documentation that alternatives methods to prevent harm failed: needle teeth trimming (no more than top 1/3rd of the tooth) in pigs and tail docking in pigs.
205.238(a)(5)(ii)		New	(ii) The following practices must not be performed on a certified operation: de-beaking, de-snooding, caponization, dubbing, toe trimming of chickens, toe trimming of turkeys unless with infrared at hatchery, beak trimming after 10 days of age, tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep shorter than the distal end of the caudal fold, and mulesing of sheep.
205.238(a)(6)	(6) Administration of vaccines and other veterinary biologics.	No change.	
205.238(a)(7)		New	(7) All surgical procedures necessary to treat an illness shall be undertaken in a manner that employs best management practices in order to minimize pain, stress, and suffering, with the use of appropriate and allowed anesthetics, analgesics, and sedatives.
205.238(a)(8)		New	(8) Monitoring of lameness and keeping records of the percent of the herd or flock suffering from lameness and the causes.

Section title	Current wording	Proposed action	Proposed wording
205.238(a)(9)		New	(9) Ammonia levels in poultry houses must be less than 25 parts per million indoors. When ammonia levels in poultry houses exceed 10 parts per million, an operation must implement additional practices to reduce the ammonia levels below 10 parts per million.
205.238(b)	(b) When preventive practices and veterinary biologics are inadequate to prevent sickness, a producer may administer synthetic medications: Provided, that, such medications are allowed under § 205.603. Parasiticides allowed under § 205.603 may be used on:	No change.	
205.238(b)(1)	(1) Breeder stock, when used prior to the last third of gestation but not during lactation for progeny that are to be sold, labeled, or represented as organically produced; and	No change.	
205.238(b)(2)	(2) Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labeled, or represented as organic	No change.	
205.238(b)(3)		New	(3) Synthetic medications may be administered in the presence of illness or to alleviate pain and suffering: Provided, that such medications are allowed under § 205.603.
205.238(c)	(c) The producer of an organic livestock operation must not:	No change.	
205.238(c)(1)	(1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under § 205.603, or any substance that contains a nonsynthetic substance prohibited in § 205.604.	Revision	(1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under § 205.603, or any substance that contains a nonsynthetic substance prohibited in § 205.604. Milk from animals undergoing treatment with synthetic substances allowed under § 205.603 having withholding time, cannot be sold as organic but may be fed to their own offspring. Milk from animals undergoing treatment with prohibited substances cannot be sold as organic or fed to organic livestock.
205.238(c)(2)	(2) Administer any animal drug, other than vaccinations, in the absence of illness;	Revision	(2) Administer any animal drug in the absence of illness or to alleviate pain or suffering, with the exception of vaccinations and other veterinary biologics.
205.238(c)(3)	(3) Administer hormones for growth promotion;	Revision	(3) Administer hormones for growth promotion, production or reproduction.
205.238(c)(4)	(4) Administer synthetic parasiticides on a routine basis;	No change.	
205.238(c)(5)	(5) Administer synthetic parasiticides to slaughter stock;	No change.	
205.238(c)(6)	(6) Administer animal drugs in violation of the Federal Food, Drug, and Cosmetic Act; or	No change.	
205.238(c)(7)	(7) Withhold medical treatment from a sick animal in an effort to preserve its organic status. All appropriate medications must be used to restore an animal to health when methods acceptable to organic production fail. Livestock treated with a prohibited substance must be clearly identified and shall not be sold, labeled, or represented as organically produced.	No change.	

Section title	Current wording	Proposed action	Proposed wording
205.238(c)(8)		New	(8) Withhold individual treatment designed to minimize pain and suffering for injured, diseased, or sick animals, which may include forms of euthanasia as recommended by the American Veterinary Medical Association.
205.238(c)(9)		New	(9) Neglect to identify and record treatment of sick and injured animals in animal health records.
205.238(c)(10)		New	(10) Practice forced molting or withdrawal of feed to induce molting.
205.238(d)		New	(d) Organic livestock operations must have comprehensive plans to minimize internal parasite problems in livestock. The plan will include preventive measures such as pasture management, fecal monitoring, and emergency measures in the event of a parasite outbreak. Parasite control plans shall be approved by the certifying agent.
205.238(e)		New	(e) Euthanasia.
205.238(e)(1)		New	(1) Organic livestock producers must have written plans for prompt, humane euthanasia for sick or injured livestock.
205.238(e)(2)		New	(2) The following methods of euthanasia are not permitted: suffocation; blow to the head by blunt instrument; and the use of equipment that crushes the neck, including killing pliers or burdizzo clamps.
205.238(e)(3)		New	(3) Following a euthanasia procedure, livestock must be carefully examined to ensure that they are dead.

AMS is proposing to amend current provisions in and add new provisions to the health care practice standards. The proposed amendment to § 205.238(a)(2) would specify that the sufficiency of the feed ration would be demonstrated by appropriate body condition of the livestock. Livestock producers would need to monitor their animals to ensure body condition is being maintained. In addition, certifying agents would need to verify the nutritional adequacy of the animals' diet by assessing the body condition of organic livestock during inspection. Suitable body condition varies between species, between breeds, and between production types. A suitable condition for dairy cattle may be considered too thin in beef cattle. Producers who routinely monitor body condition of their livestock will be more likely to discover a health or feed issue early, before the animal suffers. AMS plans to provide further information about body condition assessment through published guidance to assist certifiers, inspectors, and producers assess body condition in different species.

AMS proposes to revise § 205.238(a)(5) to clarify the conditions under which physical alterations may be performed on livestock. Physical alterations may be performed for only certain reasons, including an animal's welfare, hygiene, identification, or safety. Alterations must be done at a reasonably young age with minimal pain or stress to the animal, and only by a person who is competent to perform the procedure. Competency may be demonstrated by training or experience of the person performing the alterations or may be demonstrated by the training or experience of the person training the person performing the alterations.

AMS is proposing to add a new § 205.238(a)(5)(i) to list the physical alterations that are not allowed on a routine basis, but may be performed on an as-needed basis. Needle teeth trimming and tail docking in pigs may only be performed in response to documented animal welfare reasons when alternative steps to prevent harm fail. Teeth clipping, if performed, would be limited to the top third of the each needle tooth. For example, an organic swine producer who clipped needle teeth or performed tail docking would need to document excessive needle teeth scarring on the underline of the sow or piglets or document tail biting on piglets in the litter. Swine producers would also need to document that alternative methods failed. Such alternative methods may include, but are not limited to, cross-fostering prior to teat fidelity across litters to minimize weight variation, providing sufficient enrichment materials, and providing vegetation for rooting.

In the 2009 recommendation, the NOSB recommended that needle teeth clipping and piglet tail docking be allowed, but retracted that in its 2011 recommendation. In consideration of NOSB preferences and producer needs, AMS is proposing to restrict the use of these procedures to situations when alternative methods of preventing injury fail and the producer documents the harm to animals prior to performing either physical alteration.

AMS is proposing to add a new § 205.238(a)(5)(ii) to list the physical alterations that are prohibited in an organic operation. The following physical alterations would be prohibited under this proposal: De-beaking, de-snooding, caponization, dubbing, toe trimming of chickens, toe trimming of turkeys unless with infra-red at hatchery, beak trimming after 10 days of age, tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep shorter than the distal end of the caudal fold, and mulesing of sheep.

AMS is proposing to add a new § 205.238(a)(7) which would specify that surgical procedures on livestock to treat an illness must be done in a manner which minimizes pain, stress, and suffering. The NOSB recommended that all surgical procedures for livestock be done with the use of anesthetics, analgesics, and sedatives. AMS is proposing that all surgical procedures for treatment of disease shall be undertaken in a manner that employs best management practices in order to minimize pain, stress, and suffering, and only with the use of anesthetics, analgesics, and sedatives listed in § 205.603.

AMS is proposing to add a new § 205.238(a)(8) to require organic producers to actively monitor lameness within the herd or flock and to document the cases of lameness. Lameness can be an issue in various livestock species including broilers, sheep, and dairy cattle. The requirement for producers to create a plan for monitoring and recording instances of lameness in the Organic System Plan will enable organic livestock producers to identify and address a problem before it becomes widespread among the animals. In addition, the records will provide an auditable trail for certifying agents to verify that livestock producers are monitoring this potential cause of animal suffering.

AMS is proposing to add a new § 205.238(b)(3) to state that synthetic medications may be administered in the presence of an illness to reduce pain and suffering, as long as those medications are allowed under § 205.603. OFPA limits the use of synthetic medications in the absence of illness. AMS is proposing to follow the NOSB recommendation to allow the use of synthetic substances to alleviate pain and suffering for animals if the substances appear on the National List. AMS is proposing to take a broad view of illness to encompass not just instances of disease or injury, but also cases of inflammation due to physical alterations. By providing pain relief prior to performing a physical alteration, animal welfare is improved. In addition, by providing pain relief, the animal undergoing the physical alteration is less likely to make a sudden movement. Such movements can cause infection or a more severe injury. Again, the use of pain relief prior to the physical alteration can reduce serious complications. Physical alterations such as dehorning result in trauma to the target tissue. This trauma causes localized bleeding and inflammation, resulting in an illness state.

AMS is proposing to amend § 205.238(c)(1) to clarify that milk from an animal treated with an allowed substance in § 205.603, which has a withholding time, may not be sold, labeled, or represented as organic during that holding time. However, milk from an organic animal or breeder stock may continue to provide milk for its own offspring during the withholding time. As an example, if an organic beef cow was nursing her organic offspring, was injured and then stitched by a veterinarian using lidocaine to minimize pain and stress, her calf could continue to nurse the dam even during the 7-day withholding period for lidocaine (§ 205.603(b)(4)), without loss of the calf's organic status. This means that the calf would still be eligible to be organic slaughter stock. This is consistent with the April 2010 NOSB recommendation that a calf nursing a dam treated topically with lidocaine, or other approved synthetic with a withdrawal time would not lose organic status.

AMS is proposing to revise § 205.238(c)(2) to clarify that other veterinary biologics, in addition to vaccines, are exempt from the prohibition on administering animal drugs in the absence of illness. The Center for Veterinary Biologics (CVB) regulates vaccines and all other veterinary biologics. While vaccines are commonly used to describe many of these products, CVB has additional categories such as bacterins and toxoids. In addition, this change reflects the definition for biologicals in § 205.2. This supports § 205.238(a)(6), which identifies the use of vaccines and other veterinary biologics as a required practice to improve animal health. This section again asserts that pain relief may be administered in the absence of illness prior to physical alterations.

AMS is proposing to amend § 205.238(c)(3) to clarify that organic livestock producers are prohibited from administering synthetic or nonsynthetic hormones to promote growth or for production and reproductive purposes. Hormones listed in § 205.603 (*e.g.,* oxytocin) may continue to be used to treat illnesses. Stakeholders have noted that the USDA organic regulations are silent on the use of hormones to stimulate production or for reproductive purposes. This addition would clarify that all hormones, unless used to treat an illness, are prohibited in organic production.

AMS is proposing to add a new provision in § 205.238(c)(8) to prohibit organic livestock producers from withholding treatment designed to minimize pain and suffering for injured, diseased, or sick animals. Injured, diseased, or sick animals may be treated with any allowed natural substance or synthetic medication which appears on the National List. However, if no appropriate medication is allowed for organic production, organic livestock producers would be required to administer treatments, even if the animals would lose their organic status. Furthermore, euthanasia could be an acceptable practice for minimizing pain and suffering.

AMS is proposing to add new § 205.238(c)(9) to require livestock producers to identify and record treatment of sick and injured animals in animal health records. These records can enable producers and certifying agents to quickly identify a particular disease or ailment in an animal. Early identification can lead to more effective prevention or treatment, which will enhance the overall health of the livestock on that farm.

AMS is proposing to add a new provision in § 205.238(c)(10) to explicitly prohibit the practice of forced molting or withdrawal of feed to induce molting in poultry. Forced molting, in which feed is severely restricted for a period of time in order to rejuvenate egg production, is prohibited under § 205.238(a)(2), which requires a nutritionally sufficient feed ration. However, forced molting was never explicitly prohibited under the USDA organic regulations. This change is consistent with the NOSB recommendation and a number of other third-party animal welfare certification programs.

AMS is proposing to add a new § 205.238(e) to address euthanasia. In certain cases, livestock may be suffering from an illness from which recovery is unlikely. For these situations, organic livestock producers must maintain written plans for euthanizing sick or injured livestock (§ 205.238(e)(1)). In new a § 205.238(e)(2), AMS is proposing to prohibit certain methods of euthanasia, including: Suffocation, blow(s) to the head by blunt instrument, and use of equipment that crushes the neck, (*e.g.,* killing pliers or burdizo clamps). In the event of an emergency situation where a local, state or federal government agency requires the use of non-organically approved method of euthanasia, organic livestock operations will not lose organic certification or face other penalties for the use of non-organically approved methods of euthanasia.

AMS is further proposing, in § 205.238(e)(3), that after the euthanasia procedure, producers must carefully examine the body to ensure death. The NOSB recommended listing the allowable methods of euthanasia. However, given that new humane euthanasia methods may emerge, AMS would not intend to discourage producer adoption of these techniques. Therefore, AMS is proposing to allow organic livestock producers to use any method of euthanasia, except for those prohibited in § 205.238(e)(2). The list of prohibited methods could be amended to include other techniques, if needed, through future rulemaking.

C. Mammalian Living Conditions

205.239	Livestock Living Conditions	Revision	Mammalian Livestock Living Conditions.
205.239(a)	(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including:	No change.	
205.239(a)(1)	(1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be temporarily denied access to the outdoors in accordance with §§ 205.239(b) and (c). Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. Yards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed simultaneously without crowding and without competition for food. Continuous total confinement of any animal indoors is prohibited. Continuous total confinement of ruminants in yards, feeding pads, and feedlots is prohibited.	Revision	(1) Year-round access for all animals to the outdoors, soil, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be temporarily denied access to the outdoors in accordance with §§ 205.239(b) and (c). Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. Yards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed without competition for food in a manner that maintains all animals in a good body condition. Continuous total confinement of any animal indoors is prohibited. Continuous total confinement of ruminants in yards, feeding pads, and feedlots is prohibited.
205.239(a)(2)	(2) For all ruminants, management on pasture and daily grazing throughout the grazing season(s) to meet the requirements of § 205.237, except as provided for in paragraphs (b), (c), and (d) of this section.	No change.	
205.239(a)(3)	(3) Appropriate clean, dry bedding. When roughages are used as bedding, they shall have been organically produced in accordance with this part by an operation certified under this part, except as provided in § 205.236(a)(2)(i), and, if applicable, organically handled by operations certified to the NOP.	Revision	(3) Animals must be kept clean during all stages of life with the use of appropriate, clean, dry bedding, as appropriate for the species. When roughages are used as bedding, they must be organically produced and handled in accordance with this part by an operation certified under this part, except as provided in § 205.236(a)(2)(i), and, if applicable, organically handled by operations certified to the NOP.
205.239(a)(4)	(4) Shelter designed to allow for:	No change.	
205.239(a)(4)(i)	(i) Natural maintenance, comfort behaviors, and opportunity to exercise;	Revision	(i) Sufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior;
205.239(a)(4)(ii)	(ii) Temperature level, ventilation, and air circulation suitable to the species;	No change.	
205.239(a)(4)(iii)	(iii) Reduction of potential for livestock injury	No change.	
205.239(a)(4)(iv)		New	(iv) Areas for bedding and resting that are sufficiently large, solidly built, and comfortable so that animals are kept clean, dry, and free of lesions.
205.239(a)(5)	The use of yards, feeding pads, feedlots and laneways that shall be well-drained, kept in good condition (including frequent removal of wastes), and managed to prevent runoff of wastes and contaminated waters to adjoining or nearby surface water and across property boundaries.	No change.	
205.239(a)(6)		New	(6) Housing, pens, runs, equipment, and utensils shall be properly cleaned and disinfected as needed to prevent cross infection and build-up of disease-carrying organisms.
205.239(a)(7)		New	(7) Dairy young stock may be housed in individual pens under the following conditions:

205.239(a)(7)(i)		New	(i) Until weaning, providing that they have enough room to turn around, lie down, stretch out when lying down, get up, rest, and groom themselves; individual animal pens shall be designed and located so that each animal can see, smell, and hear other calves.
205.239(a)(7)(ii)		New	(ii) Dairy young stock shall be group-housed after weaning.
205.239(a)(7)(iii)		New	(iii) Dairy young stock over six months of age shall have access to the outdoors at all times, including access to pasture during the grazing season, except as allowed under 205.239(c).
205.239(a)(8)		New	(8) Swine must be housed in a group, except:
205.239(a)(8)(i)		New	(i) Sows may be housed individually at farrowing and during the suckling period;
205.239(a)(8)(ii)		New	(ii) Boars.
205.239(a)(8)(iii)		New	(iii) Swine with documented instances of aggression or recovery from an illness.
205.239(a)(9)		New	(10) Piglets shall not be kept on flat decks or in piglet cages.
205.239(a)(10)		New	(11) Exercise areas for swine, whether indoors or outdoors, must permit rooting, including during temporary confinement events.
205.239(a)(11)		New	(12) In confined housing with stalls, at least one stall must be provided for each animal in the facility at any given time. A cage must not be called a stall. For group-housed swine, the number of individual feeding stalls may be less than the number of animals, as long as all animals are fed routinely over a 24-hour period.
205.239(a)(12)		New	(13) At least 50 percent of outdoor access space must be soil, except for temporary conditions which would threaten the soil or water quality when outdoor access must be provided without contact to the soil.
205.239(b)	(b) The producer of an organic livestock operation may provide temporary confinement or shelter for an animal because of:	No change.	
205.239(b)(1)	(1) Inclement weather;	No change.	
205.239(b)(2)	(2) The animal's stage of life: Except, that lactation is not a stage of life that would exempt ruminants from any of the mandates set forth in this regulation.	No change.	
205.239(b)(3)	(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized	No change.	
205.239(b)(4)	(4) Risk to soil or water quality;	No change.	
205.239(b)(5)	(5) Preventive healthcare procedures or for the treatment of illness or injury (neither the various life stages nor lactation is an illness or injury);	No change.	
205.239(b)(6)	(6) Sorting or shipping animals and livestock sales: Provided, that, the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;	No change.	
205.239(b)(7)	(7) Breeding: Except, that, bred animals shall not be denied access to the outdoors and, once bred, ruminants shall not be denied access to pasture during the grazing season;	Revision	(7) Breeding: Except, that, animals shall not be confined any longer than necessary to perform the natural or artificial insemination. Animals may not be confined to observe estrus; and
205.239(b)(8)	(8) 4–H, Future Farmers of America and other youth projects, for no more than one week prior to a fair or other demonstration, through the event and up to 24 hours after the animals have arrived home at the conclusion of the event. These animals must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event.	Revision	(8) 4–H, National FFA Organization, and other youth projects, for no more than one week prior to a fair or other demonstration, through the event, and up to 24 hours after the animals have arrived home at the conclusion of the event. These animals must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event. Notwithstanding the requirements in § 205.239 (b)(6), facilities where 4–H, National FFA Organization, and other youth events are held are not required to be certified organic for the participating animals to be sold as organic, provided all other organic management practices are followed.

205.239(c)	(c) The producer of an organic livestock operation may, in addition to the times permitted under § 205.239(b), temporarily deny a ruminant animal pasture or outdoor access under the following conditions:	No change.	
205.239(c)(1)	(1) One week at the end of a lactation for dry off (for denial of access to pasture only), three weeks prior to parturition (birthing), parturition, and up to one week after parturition;	No change.	
205.239(c)(2)	(2) In the case of newborn dairy cattle for up to six months, after which they must be on pasture during the grazing season and may no longer be individually housed: Provided, That, an animal shall not be confined or tethered in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving about freely;	No change.	
205.239(c)(3)	(3) In the case of fiber bearing animals, for short periods for shearing; and	No change.	
205.239(c)(4)	(4) In the case of dairy animals, for short periods daily for milking. Milking must be scheduled in a manner to ensure sufficient grazing time to provide each animal with an average of at least 30 percent DMI from grazing throughout the grazing season. Milking frequencies or duration practices cannot be used to deny dairy animals pasture.	No change.	
205.239(d)	(d) Ruminant slaughter stock, typically grain finished, shall be maintained on pasture for each day that the finishing period corresponds with the grazing season for the geographical location: Except, that, yards, feeding pads, or feedlots may be used to provide finish feeding rations. During the finishing period, ruminant slaughter stock shall be exempt from the minimum 30 percent DMI requirement from grazing. Yards, feeding pads, or feedlots used to provide finish feeding rations shall be large enough to allow all ruminant slaughter stock occupying the yard, feeding pad, or feed lot to feed simultaneously without crowding and without competition for food. The finishing period shall not exceed one-fifth (1/5) of the animal's total life or 120 days, whichever is shorter.	Revision	(d) Ruminant slaughter stock, typically grain finished, shall be maintained on pasture for each day that the finishing period corresponds with the grazing season for the geographical location: Except, that, yards, feeding pads, or feedlots may be used to provide finish feeding rations. During the finishing period, ruminant slaughter stock shall be exempt from the minimum 30 percent DMI requirement from grazing. Yards, feeding pads, or feedlots used to provide finish feeding rations shall be large enough to allow all ruminant slaughter stock occupying the yard, feeding pad, or feedlot to feed without competition for food. The finishing period shall not exceed one-fifth (1/5) of the animal's total life or 120 days, whichever is shorter.
205.239(e)	(e) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage pastures and other outdoor access areas in a manner that does not put soil or water quality at risk.	No change.	

AMS is proposing to separate mammalian living conditions from avian living conditions, due to the different physiology and husbandry practices for birds and mammals. Under this proposal, AMS would revise the title of § 205.239 from "Livestock living conditions" to "Mammalian Livestock Living Conditions". Avian living conditions would be addressed in new § 205.241. By creating clear requirements for mammalian livestock and avian livestock, animal health and wellbeing can be enhanced and consumers can be assured of the integrity of the USDA organic seal.

AMS is proposing to revise § 205.239(a)(1) to require that food is provided in a manner that maintains all animals in good body condition while removing the requirement that all ruminant livestock must be able to feed simultaneously. This would support animal welfare by ensuring that feed rations are available to all animals so that they maintain good body condition. One method of feeding livestock, including ruminants, is the use of a self-feeder or a creep-feeder. With creep-feeding and self-feeding, feed is accessible to all animals at all times though they may not feed at the exact same time. Self-feeding and creep-feeding provides organic ruminant producers with more flexibility and options to manage their farm and livestock in farm-specific methods.

AMS is proposing to revise § 205.239(a)(3) to clarify that livestock producers must keep animals clean during all stages of life with the use of appropriate, clean, dry bedding. Ensuring animals are clean is a disease prevention practice. Clean animals are less likely to develop lesions, transmit diseases, or become cold due to matted hair coats. The requirement for clean animals is relative to the species. Swine would be allowed to exhibit natural behavior and wallow in mud, and ruminants grazing on lush spring grass would be expected to have some manure on their hind quarters due to the natural behavior of grazing.

AMS is proposing to revise § 205.239(a)(4)(i) to specify that shelter must be designed to accommodate natural behaviors. Shelter must have sufficient space for the animals to lie down, stand up, and fully stretch their limbs without touching other animals or the sides of the shelter. Shelter must be designed to allow livestock to express their normal patterns of behavior.

AMS is proposing to add § 205.239(a)(4)(iv) to require a sheltered area for bedding and resting, which is sufficiently large and comfortable to keep the animals clean, dry, and free of lesions. This supports the proposed revision in § 205.239(a)(3), which would require producers to keep livestock clean. Not all shelters would need to be designed to hold bedding. As an example, a shelter designed to provide shade may be portable, and thus incompatible with holding bedding.

AMS is proposing to add new requirements in § 205.239(a)(7) concerning the individual housing of dairy young stock. Section 205.239(a)(7)(i) would allow for the individual housing of animals until weaning, as long as the animals had sufficient room to turn around, lie down, stretch out while lying down, get up, rest, and groom themselves. In addition, the individual housing of young stock would need to be designed so that animals could see, smell, and hear other animals. Furthermore, new § 205.239(a)(7)(ii) would require that dairy young stock are group-housed after weaning, and new § 205.239(a)(7)(iii) would require that animals over six months of age must have access to the outdoors at all times, including access to pasture during the grazing season, except as allowed under § 205.239 (b) and (c). Weaning is the time at which the young are taken off of milk or milk replacers.

AMS is proposing to add three new provisions in § 205.239(a)(8) to require the group housing of swine, with several listed exceptions. Section 205.239(a)(8)(i) would allow for sows to be individually housed at farrowing and during the suckling period. Section 205.239(a)(8)(ii) would allow for boars to be individually housed to reduce the likelihood of fights and injuries. Section 205.239(a)(8)(iii) would allow for swine to be individually housed after documented multiple instances of aggression or to allow an individual pig to recover from a documented illness.

AMS is proposing to add two new provisions in § 205.239(a)(9) and (10) concerning swine housing. Section 205.239(a)(9) would prohibit the use of flat decks or piglet cages. This provision would prohibit the stacking of piglets in flat decks in multiple layers. In addition, § 205.239(a)(10) would require that both indoor and outdoor areas for swine would have some space which would permit rooting. Rooting is a natural behavior which must be accommodated by organic swine producers and could be done in soil, deep packed straw, or other materials. Organic swine producers must also demonstrate how swine will be allowed to root during temporary confinement events.

AMS is proposing to add a new provision in § 205.239(a)(11) to further define barns or other structures with stalls. If indoor shelter is provided by a structure with stalls, then one stall must be provided for each animal at any given time. This allows for all animals to rest or lie down at the same time and provides a space for less dominant animals to escape from aggressive animals. In no case may a cage be considered a stall. One exception is provided for this provision. In group-housed swine, more animals than feeding stalls may be allowed, as long as all animals are able to consume sufficient quantities of feed to maintain good body condition. AMS is aware of some enhanced swine welfare systems, in which animals are robotically fed once they enter an individual feeding stall. Once finished, the animal may leave the stall and another animal enter the stall for its specific quantity of feed. AMS did not intend to prohibit such systems, which enhance the health and wellbeing of organic animals.

AMS is proposing to add a new requirement for outdoor access in § 205.239(a)(12). Organic livestock are required to have unencumbered access to the outdoors at all times, unless temporary confinement is justified under a specific reason described in the regulations (*e.g.*, nighttime confinement for protection from predators). As part of the definition of the outdoors, livestock must have access to the soil in a manner that maintains or improves the natural resources of the farm, and does not degrade soil or water quality. To make access to soil meaningful, at least 50 percent of all the outdoor access area must be comprised of soil. This will benefit mammals, as surfaces such as concrete may lead to more joint problems and resulting lameness. Soil also provides an opportunity for swine to root and engage in other natural behaviors.

AMS is proposing to revise § 205.239(b)(7) to clarify the exemption for temporary confinement for the purpose of breeding livestock. Livestock may only be confined for the time that a natural or artificial breeding procedure requires. A group of livestock may be confined while the various individuals are bred, then the group would be returned to living spaces that allow outdoor access. Livestock may not be confined indoors to observe estrus. Section 205.239(c)(1) describes the time when ruminants may be denied access to pasture, but not access to the outdoors, before and after a breeding attempt.

AMS is proposing to revise § 205.239(b)(8) to clarify the temporary confinement exception for youth livestock projects. Many youth livestock projects include the sale of market animals. Organic animals that were under continuous organic management may be sold as organic animals at youth fairs, even if the sales facility is not certified organic. This revised provision includes an exemption to the § 205.239(b)(6) requirement that a livestock sales facility be certified as an organic operation. As an example, if a youth exhibition and sale is held at a livestock sales facility which is not certified organic, the youth may sell the organic animal as an organic animal, provided all other requirements for the organic management of livestock are met. Otherwise, non-certified sales facilities, such as auction barns or fair grounds, may not sell or represent livestock as organic. AMS is proposing to provide this exception to encourage the next generation of organic farmers.

AMS is proposing to revise § 205.239(d) to reflect the similar proposed changes in § 205.239(a)(1). AMS would remove the phrase requiring that all ruminants be able to feed simultaneously. This would allow the use of self-feeding and creep-feeding so that the ruminants would have access to feed continuously over a 24-hour period.

D. Avian Living Conditions

205.241	New	Avian Living Conditions.
205.241(a)	New	(a) The producer of an organic poultry operation must establish and maintain year-round poultry living conditions which accommodate the health and natural behavior of poultry, including: year-round access to outdoors; shade; shelter; exercise areas; fresh air; direct sunlight; clean water for drinking; materials for dust bathing; and adequate outdoor space to escape from predators and aggressive behaviors suitable to the species, its stage of life, the climate and environment. Poultry may be temporarily denied access to the outdoors in accordance with § 205.241(d).
205.241(b)	New	Indoor space requirements.
205.241(b)(1)	New	(1) All birds must be able to move freely, and engage in natural behaviors.
205.241(b)(2)	New	(2) Ventilation must be adequate to prevent buildup of ammonia. Ammonia levels must not exceed 25 ppm. Producers must monitor ammonia levels on a monthly basis. When ammonia levels exceed 10 ppm, producers must implement additional practices to reduce ammonia levels below 10 ppm.
205.241(b)(3)	New	(3) For layers and mature birds, artificial light may be used to prolong the day length up to 16 hours. Artificial light intensity must be lowered gradually to encourage hens to move to perches or settle for the night. Natural light must be sufficient indoors on sunny days so that an inspector can read and write when all lights are turned off.
205.241(b)(4)	New	(4)The following types of flooring may be used in shelter provided for avian species:
205.241(b)(4)(i)	New	(i) Mesh or slatted flooring under drinking areas to provide drainage;
205.241(b)(4)(ii)	New	(ii) Houses, excluding pasture housing, with slatted/mesh floors must have 30 percent minimum of solid floor area available with sufficient litter available for dust baths so that birds may freely dust bathe without crowding.
205.241(b)(4)(iii)	New	(iii) Litter must be provided and maintained in a dry condition.
205.241(b)(5)	New	(5) Poultry houses must have sufficient exit areas, appropriately distributed around the building, to ensure that all birds have ready access to the outdoors.
205.241(b)(6)	New	(6) Flat roosts areas must allow birds to grip with their feet. Six inches of perch space must be provided per bird. Perch space may include the alighting rail in front of the nest boxes. All birds must be able to perch at the same time except for multi-tiered facilities, in which 55 percent of birds must be able to perch at the same time. Facilities for species which do not perch do not need to be contain perch and roost space.
205.241(b)(7)	New	(7) For layers, no more than 2.25 pounds of hen per square foot of indoor space is allowed at any time, except;
205.241(b)(7)(i)	New	Pasture housing: no more than 4.5 pounds of hen per square foot of indoor space;
205.241(b)(7)(ii)	New	Aviary housing: no more than 4.5 pounds of hen per square foot of indoor space;
205.241(b)(7)(iii)	New	Slatted/mesh floor housing: no more than 3.75 pounds of hen per square foot of indoor space; and
205.241(b)(7)(iv)	New	Floor litter housing: no more than 3.0 pounds of hen per square foot of indoor space.
205.241(b)(8)	New	(8) For pullets, no more than 3.0 pounds of pullet per square foot of indoor space may be allowed at any time.
205.241(b)(9)	New	(9) For turkeys, broilers, and other meat type species, no more than 5.0 pounds of birds per square foot of indoor space is allowed at any time.
205.241(b)(10)	New	(10) All birds must have access to scratch areas in the house.
205.241(b)(11)	New	(11) Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors.
205.241(c)	New	Outdoor Space Requirements.
205.241(c)(1)	New	(1) Outside access and door spacing must be designed to promote and encourage outside access for all birds on a daily basis. Producers must provide access to the outdoors at an early age to encourage (train) birds to go outdoors. Outdoor areas must have suitable enrichment to entice birds to go outside. Birds may be temporarily denied access to the outdoors in accordance with § 205.241(d).
205.241(c)(2)	New	(2) Exit areas for birds to get outside must be designed so that more than one bird at a time can get through the opening and that all birds within the house can go through the exit areas within one hour.
205.241(c)(3)	New	(3) For layers, no more than 2.25 pounds of hen per square foot of outdoor space may be allowed at any time.
205.241(c)(4)	New	(4) For pullets, no more than 3.0 pounds of pullet per square foot may be allowed at any time.
205.241(c)(5)	New	(5) For turkeys, broilers, and other meat type species, no more than 5.0 pounds of bird per square foot may be allowed at any time.
205.241(c)(6)	New	(6) Space that has a solid roof overhead and is attached to the structure providing indoor space does not meet the definition of outdoor access and must not be included in the calculation of outdoor space.
205.241(c)(7)	New	(7) Shade may be provided by structures, trees or other objects in the environment.
205.241(c)(8)	New	(8) At least 50 percent of outdoor access space must be soil.
205.241(d)	New	(d) The producer of an organic poultry operation may temporarily confine birds. Each instance of confinement must be recorded. Producers may confine birds because of:
205.241(d)(1)	New	(1) Inclement weather, including, when air temperatures are under 40 degrees F or above 90 degrees F;
205.241(d)(2)	New	(2) The animal's stage of life, including the first 4 weeks of life for broilers and other meat type birds and the first 16 weeks of life for pullets; and
205.241(d)(3)	New	(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized; however, the potential for disease outbreak is not sufficient cause. A documented occurrence of a disease in the region or relevant migratory pathway must be present in order to confine birds.
205.241(d)(4)	New	(4) Risk to soil or water quality.

205.241(d)(5)	New	(5) Preventive healthcare procedures or for the treatment of illness or injury (neither various life stages nor egg laying is an illness or injury).
205.241(d)(6)	New	(6) Sorting or shipping birds and poultry sales: Provided, the birds are maintained under continuous organic management, throughout the extent of their allowed confinement.
205.241(d)(7)	New	(7) Nest Box training: Except, that, birds shall not be confined any longer than two weeks to teach the proper behavior.
205.241(d)(8)	New	(8) 4–H, National FFA Organization, and other youth projects, for no more than one week prior to a fair or other demonstration, through the event, and up to 24 hours after the birds have arrived home at the conclusion of the event. These birds must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event. Notwithstanding the requirements in paragraph (d)(6) of this section, facilities where 4–H, National FFA Organization, and other youth events are held are not required to be certified organic for the participating birds to be sold as organic, provided all other organic management practices are.
205.241(e)	New	(e)The producer of an organic poultry operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage outdoor access in a manner that does not put soil or water quality at risk.

In conjunction with the proposed amendments discussed above, AMS is proposing to add a new § 205.241, entitled "Avian living conditions." AMS chose to divide in two the existing living condition section, one for mammalian and one for avian, to provide for more clarity and specificity for each. The proposed avian living conditions section would include existing provisions from the current living conditions requirements as well as requirements recommended by the NOSB. AMS made a similar decision when the pasture requirements were added specifically for ruminants and not simply appended onto the livestock feed section. The requirements in this new section would apply to all poultry species, including but not limited to, chickens, turkeys, geese, quail, pheasant, and any other species which are raised for organic eggs, organic meat, or other organic agricultural product. AMS is proposing to add § 205.241(a) to require organic poultry operations to establish and maintain living conditions that accommodate the health and natural behaviors of the birds.

In addition, a new § 205.241(a) would require organic poultry producers to provide their birds with year-round access to the outdoors, soil, shade, shelter, exercise areas, fresh air, direct sunlight, clean water for drinking, materials for dust bathing, and adequate space to escape both predators and aggressive behaviors, in a manner that is suitable to the species, the stage of life, and the environment. These general principles will be further clarified in § 205.241(b) and (c). New § 205.241(d) describes exceptions to the requirement for outdoor access.

AMS is proposing to add a new § 205.241(b) to specify avian indoor space requirements. New § 205.241(b)(1) would require that indoor space allow all birds to move freely and engage in natural behaviors. This would prohibit the use of cages or environments which limit free movement within the indoor space. In addition, the indoor space must allow birds to engage in natural behaviors such as dust bathing or escape from aggressive birds.

AMS is proposing to add a new § 205.241(b)(2) to require ventilation suitable to prevent ammonia in excessive concentrations in the indoor space. Ammonia is a natural breakdown product of manure from livestock which can be harmful for birds to inhale. Producers must describe in the Organic System Plan methods and procedures which will maintain ammonia under 10 ppm. Ammonia levels would need to be monitored monthly to verify that ammonia concentrations remain under 10 ppm and never exceed 25 ppm. Producers would need to implement additional ammonia mitigation procedures when ammonia levels exceed 10 ppm to ensure that ammonia levels never exceed 25 ppm in the indoor space. Ammonia in high concentrations is harmful for birds to inhale, and, in many cases, is a sign that the litter is too damp, which also may cause lameness in the birds.

AMS is proposing to add a new § 205.241(b)(3) to clarify the lighting requirements for organic poultry. Organic producers may use artificial light to prolong the daylight up to 16 hours. No artificial light could be used to prolong the day if natural darkness was 8 hours or less. Artificial light must be lowered gradually to encourage hens to move to perches or otherwise settle for the night. Producers must design indoor spaces with access to natural light so that, on sunny days, inspectors can read and write when the lights are turned off. This requirement sets forth a performance standard that facilitates inspection, provides for enough lighting to accommodate natural avian behavior, and allows flexibility to operations in determining how to design their facilities for compliance.

AMS is proposing to add a new § 205.241(b)(4) to describe the types of flooring that may be used in all types of indoor poultry houses provided for avian species. Mesh flooring would be allowed under drinking areas to provide drainage in new § 205.241(b)(4)(i). AMS is proposing to add new § 205.241(b)(4)(ii) to allow for slatted floors as long as 30 percent of the flooring is solid with sufficient litter so that birds may dust bathe freely without crowding. Pasture housing is being exempted from this requirement, as birds on pasture will have large areas of outdoor space for dust bathing. AMS is further proposing in new § 205.241(b)(4)(iii) that the litter must be provided in all types of indoor housing and maintained in a dry manner. Wet litter can lead to a variety of problems for birds, including lameness and excess ammonia concentration. Litter may be topped off when needed to maintain sufficient dryness.

AMS is proposing to add a new § 205.241(b)(5) to describe the required openings in shelters so that the birds can easily access both the indoor and outdoor areas. Doors or openings must be distributed around the building. In addition, the openings must be large enough to allow the passage of more than one bird at a time. Wide doors spread around the building provide meaningful outdoor access to the birds.

AMS is proposing to add a new § 205.241(b)(6) to require a flat roost area which birds may grip with their feet with a minimum of 6 inches of perch space per bird. The perch space may include the alighting rail in front of nest boxes. In single story buildings, all birds must be able to perch at the same time. In multi-tiered facilities, 55 percent of the birds must be able to perch at the same time, and the 6-inch per hen requirement still applies.

Perches may be either set on the ground/platform or elevated.

AMS is proposing to add new § 205.241(b)(7), (b)(7)(i), (b)(7)(ii), (b)(7)(iii), (b)(7)(iv), (b)(8), and (b)(9) to list the required minimum avian indoor space requirements. Indoor space requirements apply with various minimums to all methods of production, including ones in which indoor space is provided with permanent buildings or mobile pasture units. Indoor space is further defined in § 205.2, including pasture housing, aviary housing, floor little housing and slatted/mesh floor housing. In 2011, the NOSB recommended a minimum of 2.0 square feet per hen based on the outside perimeter of the indoor housing structure and in which all types of indoor housing would have the same space requirement. In preparation for this proposed rule, AMS examined a number of other animal welfare certification programs developed by scientific committees.[12] These animal welfare certification standards varied from a minimum of 1.0 square feet per bird in aviaries and pasture systems to 1.8 square feet per hen with no more than 500 hens per barn. In addition, AMS obtained comments from various producer, certifying agent, and trade groups. Producers in colder climates stated that maintaining a warm indoor temperature during the winter is much more difficult with a 2.0 square foot minimum requirement for indoor space. Producers with aviaries cited the scientific committees' findings that aviaries provided enhanced welfare due to birds being able to utilize vertical space to engage in natural behaviors. Producers with slatted/mesh floors cited the reduced welfare concerns from lameness by keeping the litter drier. To better align with current scientific consensus, AMS is determining the space density requirements by housing type. AMS is proposing that pasture housing have a maximum of 4.5 pounds per square foot; aviary housing have a maximum of 4.5 pounds per square foot; slatted/mesh floor have a maximum of 3.75 pounds per square foot; and floor litter housing have a maximum of 3.0 pounds per square foot. As explained below, AMS is proposing to use pounds of laying hen per square foot to measure indoor space per laying hen, in order to have consistent application of this requirement for different avian species/varieties.

AMS recognizes that a wide variety of species and breeds within species may be used to produce eggs for human consumption. Using a minimum space per animal would be problematic if a producer of quail eggs or emu eggs were to seek organic certification. The square feet of space per hen metric would not be reasonable for these and other species. Therefore, AMS is proposing to convert the minimum square feet of space per hen to the construction of maximum pounds of laying hen per square foot of space provided, similar to format of the NOSB-recommended minimum space for pullets and meat-type birds. To make this conversion, AMS determined that a majority of organic eggs are brown eggs. AMS determined that about 60 percent of all brown eggs are produced by the ISA Brown strain of chicken. Based on this, AMS made the assumption a majority of the organic brown eggs were produced by the ISA Brown strain of chicken. An average mature weight for an ISA Brown hen is 4.5 pounds. AMS made the following calculation to convert minimum square feet to maximum pounds per square foot:

(1 hen/2.0 square feet) * (4.5 pounds/1 hen) = 2.25 pounds per square foot

Table 1 lists the square feet per laying hen for various housing types and the resulting calculation of pounds of hen per square foot allowed.

TABLE 1—INDOOR STOCKING DENSITY—UNIT CONVERSION

Indoor housing type	Square feet per laying hen	Pounds of hen per square foot
Pasture	1.0	4.5
Aviary	1.0	4.5
Floor Litter	1.5	3.0
Pit/mesh litter	1.2	3.75
All others	2.0	2.25

AMS is requesting comments regarding the above assumptions. Specifically, AMS requests comments on:

- Are most organic eggs brown?
- Are most organic laying hens from the ISA Brown strain?
- Is the mature weight of an ISA Brown hen 4.5 pounds under organic condition?
- What other avian species are used for organic egg production?

The indoor space requirement based upon maximum pounds of laying hen per square foot of space will allow producers to vary the number of birds in a given house depending upon the size of the bird or breed of the bird. For example, Rhode Island Red birds are heavier than white leghorns or ISA Browns, and thus could not be stocked as densely (number of birds per unit area) in the same area.

AMS is proposing to use the NOSB recommendation of a maximum 3 pounds of pullet per square foot of indoor space in new § 205.241(b)(8) and a maximum of 5 pounds of meat-type species (*e.g.*, broilers, turkeys, geese) per square foot of indoor space in § 205.241(b)(9). These are minimum standards, and organic producers may choose to provide more indoor space than required.

AMS is proposing to add new § 205.241(b)(10) and (11) to specify indoor requirements to meet certain natural behaviors. Indoor space, whether stationary or mobile, must have scratch areas which allow all birds access. In addition, the indoor housing must be sufficiently spacious to allow all birds to move freely, stand normally, stretch their wings and engage in natural behaviors.

AMS is proposing to add a new § 205.241(c) to specify the outdoor space requirements for avian species. Section 205.241(c)(1) would require that the outdoor space be designed to promote and encourage outdoor access for all birds. Producers would be required to train birds to go outdoors from an early age. Outdoor space requirements are not meaningful unless the birds go outside. Therefore, producers must actively and repeatedly train their birds to access the outdoors and provide sufficient enrichment so that the birds stay outdoors. Organic producers may temporarily deny birds access to the outdoors space, in accordance with § 205.241(d).

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[12] AMS reviewed the following animal welfare certification programs: Certified Humane (Humane Farm Animal Care); Animal Welfare Approved; Animal American Humane Certified (American Humane Association); 5-Step Animal Welfare Rating Program (Global Animal Partnership); and United Egg Producers Certified.

AMS is proposing in § 205.241(c)(1), in line with the NOSB recommendation, that outdoor areas must have suitable enrichment to entice the birds to go outside. One example of suitable enrichment would be a minimum 50 percent vegetative cover (living vegetation or harvested vegetation scattered in the area). Minimum vegetative cover would provide opportunities for poultry to engage in natural foraging behaviors. In addition, the vegetative cover would help to reduce soil erosion and nutrient run off. Other means of providing enrichment include, but are not limited to: Access to water for water birds; bales of straw or hay; raised platforms; cover for protection from aerial predators; shaded areas and trees; and loose substrate for dust bathing.

AMS is proposing to add new § 205.241(c)(3) through (5) to specify minimum outdoor space requirements. Organic layer producers must not exceed 2.25 pounds of hen per square foot of outdoor space provided. Organic pullet producers must not exceed 3 pounds of pullet per square foot of outdoor space provided. Organic broiler, turkey and other meat-type producers must not exceed 5 pounds of bird per square foot of outdoors space provided. AMS chose to convert the NOSB recommended space for layers from a minimum space per hen to a maximum weight of bird per square foot to provide greater flexibility in the regulations for organic producers that produce organic eggs from quail, emu, or other species using a similar calculation as shown in the indoor space requirement section earlier. These space requirements are the minimum allowed.

AMS is proposing to add new § 205.241(c)(6) and (7) to specify how outdoor space must be calculated. Outdoor space may not include any area which has a solid roof that is attached to the structure which provides indoor space. Areas under eaves and overhangs from the stationary barn or mobile unit may not be included as part of the outdoor space. However, the outdoor space must provide shade for the birds. For example, a structure with a solid roof that is not attached to a structure which provides indoor space may be included as part of the outdoor space. Shade may also be provided by trees or other objects in the environment.

AMS is proposing to add a new § 205.241(c)(8) to require that the outdoor space have a minimum of 50 percent soil. The soil would allow for the birds to engage in natural foraging and dust bathing behaviors. In addition, the soil, if covered in vegetation, would provide nutrition and enrichment to help draw the birds outdoors.

AMS is proposing to add a new § 205.241(d) to describe the conditions under which organic avian livestock producers may temporarily confine birds indoors. Each period of confinement must be separately recorded with the reasons for the confinement, the duration of the confinement, and the birds or flocks which were confined. AMS is proposing to add a new § 205.241(d)(1) to provide an allowance for temporary confinement in response to inclement weather. Birds may be confined due to storms, blizzards, and other hazardous conditions. In addition, this provision allows for birds to be confined indoors when the temperature does not exceed 40 °F. It also allows birds to be denied access or brought inside when the daytime temperature exceeds 90 °F. Producers must provide documentation for confinement due to inclement weather, such as an actual thermometer reading on the farm or a local weather forecast showing the daytime high would either not exceed 40 °F or that the temperature exceeded 90 °F. Producers would have to provide outdoor access during those parts of the day when temperatures were between 40–90 °F.

AMS is proposing to add a new § 205.241(d)(2) to provide an allowance for temporary confinement indoors due to stage of life. Broilers and other meat-type birds may be confined up through 4 weeks of age. After the 4th week of life, broilers and other meat-type birds must be provided with outdoor access. Pullets may be temporarily confined indoors through 16 weeks of age. After the 16th week of life, pullets must be provided with outdoor access. The NOSB recommended that 16 weeks of age be used before required outdoor access, so that pullets could complete their vaccination program before exposure to pathogens outdoors.

AMS is proposing to add a new § 205.241(d)(3) to provide an allowance for temporary indoor confinement under conditions in which the health, safety, or well-being of the birds could be jeopardized. Permanently restricting birds to the indoors is not allowed. In addition, confinement due to potential outbreaks is not allowed. A documented case of the disease in the region or migratory pathway must be present before a temporary confinement may begin.

AMS is proposing to add a new § 205.241(d)(4) to provide an allowance for indoor confinement to prevent risk to soil or water quality. This allowance is for temporary confinement after major rain events in which the soil may be excessively soft so that the birds could create a soil or water run off risk.

AMS is proposing to add a new § 205.241(d)(5) to provide an allowance for indoor confinement for preventive health care procedures or for the treatment of illness or injury. Neither life stages nor egg laying are considered an illness for confinement purposes. This provision would allow for producers to briefly confine a flock to administer vaccinations or to confine an individual animal that required medical treatment. This provision would also allow for an injured or sick animal to be confined indoors until the animal regained health.

AMS is proposing to add a new § 205.241(d)(6) to provide an allowance for indoor confinement for sorting, shipping, and poultry sales. However, the birds must be managed organically during the entire time of confinement. Confinement must be no longer than necessary to sort the birds or to catch the birds, place them in shipping containers, and conduct the sale.

AMS is proposing to add a new § 205.241(d)(7) to provide an allowance for indoor confinement to train pullets to use the nest box. However, this training period may only be a maximum of 2 weeks and must not be any longer than necessary to teach the birds the proper behavior.

AMS is proposing to add a new § 205.241(d)(8) to provide an allowance for indoor confinement for youth exhibitions, such as with 4–H or the National FFA Organization. This new provision also includes an exemption to the § 205.239(b)(6) requirement that a livestock sales facility being certified as an organic operation. As an example, if a youth exhibition and sale is held at a livestock sales facility which is not certified organic, a youth may sell birds there as organic, provided all other requirements for the organic management are met. Otherwise, non-certified sales facilities, such as auction barns, may not sell or represent livestock as organic. AMS is adding this exemption to encourage the next generation of organic producers.

AMS is proposing to add a new § 205.241(e) to require organic poultry producers to manage manure in a manner that does not contribute to contamination of crops, soil, or water quality by plant nutrients, heavy metals, or pathogenic organisms. Organic poultry producers must manage the outdoor space in a manner that does not put soil or water quality at risk. In addition, organic poultry producers must comply with all other governmental agency requirements for environmental quality.

E. Transport and Slaughter

E. Transport and Slaughter

205.242		New	Transportation and Slaughter.
205.242(a)		New	(a) Transportation.
205.242(a)(1)		New	(1) Certified organic livestock must be clearly identified as organic and transported in pens within the livestock trailer clearly labeled for organic use and be contained in those pens for the duration of the trip.
205.242(a)(2)		New	(2) All livestock must be fit for transport to auction or slaughter facilities.
205.242(a)(2)(i)		New	(i) Calves must have a dry navel cord and be able to stand and walk without human assistance.
205.242(a)(2)(i)		New	(ii) Sick, injured, weak, disabled, blind, and lame animals must not be transported for sale or slaughter. Such animals may be medically treated or euthanized.
205.242(a)(3)		New	(3) Adequate and season-appropriate ventilation is required for all livestock trailers, shipping containers and any other mode of transportation used to protect animals against cold and heat stresses.
205.242(a)(4)		New	(4) Bedding must be provided on trailer floors and in holding pens as needed to keep livestock clean, dry, and comfortable during transportation and prior to slaughter. Poultry crates are exempt from the bedding requirement. When roughages are used for bedding they must have been organically produced and handled by certified organic operations.
205.242(a)(5)		New	(5) Arrangements for water and organic feed must be made if transport time, including all time on the mode of transportation, exceeds twelve hours.
205.242(a)(5)(i)		New	(i) The producer or handler of an organic livestock operation must transport livestock in compliance with the Federal Twenty-Eight Hour Law (49 U.S.C. 80502) and the regulations at 9 CFR 89.1–89.5.
205.242(a)(5)(ii)		New	The producer or handler of an organic livestock operation must provide all non-compliant records and subsequent corrective action related to livestock transport during the annual inspection.
205.242(a)(6)		New	(6) Organic producers must have in place emergency plans adequate to address possible animal welfare problems that might occur during transport.
205.242(b)		New	Mammalian Slaughter.
205.242(b)(1)		New	Producers and handlers who slaughter organic livestock must be in compliance with the Federal Meat Inspection Act (21 U.S.C. 603(b) and 21 U.S.C. 610(b) and the regulations at 9 CFR part 313 regarding humane handling and slaughter of livestock.
205.242(b)(2)		New	Producers and handlers who slaughter organic exotic animals must be in compliance with the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.)* and the regulations at 9 CFR parts 313 and 352 regarding the humane handling and slaughter of exotic animals.

205.242(b)(3)		New	Producers and handlers who slaughter organic livestock or exotic animals must provide all non-compliant records related to humane handling and slaughter issued by the controlling national, federal, or state authority and all records of subsequent corrective actions during the annual organic inspection.
205.242(c)		New	(c) Avian Slaughter.
205.242(c)(1)		New	(1) Producers and handlers who slaughter organic poultry must be in compliance with the Poultry Products Inspection Act requirements (21 U.S.C. 453(g)(5) and the regulations at 9 CFR 381.1(b)(v), 381.90, and 381.65(b)).
205.242(c)(2)		New	(2) Producers and handlers who slaughter organic poultry must provide all non-compliant records related to the use of good manufacturing practices in connection with slaughter issued by the controlling national, federal, or state authority and all records of subsequent corrective actions during the annual organic inspection.
205.242(c)(3)		New	(3) Producers and handlers who slaughter organic poultry, but are exempt from or not covered by the requirements of the Poultry Products Inspection Act , must ensure that:
205.242(c)(3)(i)		New	(i) No lame birds may be shackled, hung, or carried by their legs;
205.242(c)(3)(ii)		New	(2) All birds shackled on a chain or automated system must be stunned prior to exsanguination; and
205.242(c)(3)(iii)		New	(3) All birds must be irreversibly insensible prior to being placed in the scalding tank.

Under the OFPA at 7 U.S.C. 6509(d)(2), "Health Care," the NOSB may make recommendations "for the care of livestock to ensure that such livestock is organically produced." As stated above, in December 2011, the NOSB passed a recommendation to add standards for transportation of livestock to slaughter facilities and the slaughter process. AMS is proposing regulations, in a new § 205.242 for Transportation and Slaughter, in response to this recommendation. This proposed section would require producers and handlers of livestock to maintain organic integrity and provide for animal welfare during transportation. Further, the proposed section would clarify the requirements for slaughter of livestock by certified operations. These requirements would include performance standards regarding the transportation of livestock, including a requirement that operations comply with the Twenty-Eight Hour Law and its implementing regulations as a condition of organic certification. These requirements also would establish as a condition of organic certification compliance with the Federal Meat Inspection Act (FMIA) and Poultry Products Inspection Act requirements concerning slaughter, as well as compliance with USDA Food Safety and Inspection Service (FSIS) regulatory requirements regarding the slaughter of exotic animals under voluntary inspection.

Transportation

AMS is proposing to publish the transportation requirements in new § 205.242(a). Section 205.242(a)(1) would require that all organic livestock be transported in a trailer/truck or in pens within the trailer/truck that are clearly identified for organic use, and that the animals remain within those pens for the duration of the trip.

AMS is proposing a new § 205.242(a)(2) to set minimum fitness requirements for livestock to be transported. Section 205.242(a)(2)(i) would require that calves have a dry navel cord, and be able to stand and walk without assistance, if they are to be transported. This provision would apply only to transport to auction facilities or slaughter facilities. Beef cattle and dairy cattle producers may transport calves on the farm before the navel is dried and the calves can walk. Section 205.242(a)(2)(ii) would prohibit transport of sick, injured, weak, disabled, blind, and lame animals to auction or slaughter facilities. These animals may either be given medical treatments and cared for until they improve or euthanized.

AMS is proposing new § 205.242(a)(3) and (4) to set minimum standards for the trailer, truck, or shipping container used for transporting organic livestock. The mode of transportation would be required to provide seasonal-appropriate ventilation to protect against cold or heat stress. This provision would require that air flow be adjusted depending upon the season and temperature. In addition, bedding would be required to be provided on trailer floors as needed to keep livestock clean, dry and comfortable. If roughage is used as bedding, the bedding would need to be organically produced and handled. Use of non-organic bedding would cause loss of organic status for all animals transported. Poultry crates would be exempted from the bedding requirement.

Section 205.242(a)(5) would require that all livestock must be provided with organic feed and clean water if transport time exceeds 12 hours. The 12 hour time period includes all times in which the animals are on the trailer/truck/shipping container but not moving. In cases such as poultry slaughter where requirements do not allow feed 24 hours before slaughter, producers and slaughter facilities would need to ensure that transport time did not exceed 12 hours, as the birds would need to be fed at that time.

AMS is proposing new § 205.242(a)(5)(i) and (ii) to clarify the authority of the NOP, certifying agents and State organic programs to initiate compliance action if certified operations are found to have violated the Twenty-Eight Hour Law (49 U.S.C. 80502) and its implementing regulations at 9 CFR 89.1 through 89.5. In general, this law provides that animals may not be confined for more than 28 consecutive hours without unloading for feeding, watering and rest. The USDA Animal and Plant Health Inspection Service (APHIS) enforces this law and has approved in-transit feed, water and rest stations. Violators of the Twenty-Eight Hour Law are subject to civil penalties. In the event that a certified operation receives a non-compliance or civil penalty under the Twenty-Eight Hour Law, the certified operation must present those records to the certifier during the annual organic inspection.

AMS is proposing a new § 205.242(a)(6) to require operations which transport livestock to sales or slaughter to have in place emergency plans that adequately address problems reasonably possible during transport. Such emergency plans could include how to provide feed and water if transport time exceeded 12 hours, if livestock escaped during transport, or how to euthanize an animal hurt during transport. Shipping and/or receiving operations would need to include these plans in their OSPs.

Slaughter and the Handling of Livestock in Connection With Slaughter

AMS is proposing a new § 205.242(b), regarding mammalian slaughter, to clarify the authority of the NOP, certifying agents and State organic programs to initiate compliance action if certified operations are found to have violated FSIS regulations governing the humane handling of mammalian livestock in connection with slaughter (note that AMS is separating mammalian from avian slaughter requirements due to the differences in how mammalian and avian livestock are handled and slaughtered). This new section, entitled "Mammalian Slaughter," would govern the mammals defined as "livestock" or "exotic animals" under the FSIS regulations. Under the FSIS regulations, "livestock" are cattle, sheep, swine, goat, horse, mule, or other equine. "Exotic animals" are antelope, bison, buffalo, cattalo, deer, elk, reindeer and water buffalo. These regulations govern the handling and slaughter of the majority of mammalian animals used for food in the United States and would apply to all certified organic operations that slaughter these animals.

AMS is proposing to add a new § 205.242(b)(1) to require certified organic slaughter facilities to be in full compliance with the Humane Methods of Slaughter Act (HMSA) of 1978 (7 U.S.C. 1901 *et seq.*) and its implementing FSIS regulations. The HMSA requires that humane methods be used for handling and slaughtering livestock and defines humane methods of slaughter. In the HMSA, Congress found "that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce." The HMSA is referenced in the FMIA at 21 U.S.C. 603 and is implemented by FSIS humane handling and slaughter regulations found at 9 CFR part 313. The FMIA provides that, for the purposes of preventing inhumane slaughter of livestock, the Secretary of Agriculture will assign inspectors to examine and inspect the methods by which livestock are slaughtered and handled in connection with slaughter in slaughtering establishments subject to inspection (21 U.S.C. 603(b)).

All establishments that slaughter livestock, which include any certified organic operations that slaughter livestock, must meet the humane handling and slaughter requirements the entire time they hold livestock in connection with slaughter. FSIS provides for continuous inspection in livestock slaughter establishments, and inspection program personnel verify compliance with the humane handling regulations during each shift that animals are slaughtered, or when animals are on site, even during a processing only shift. The regulations at 9 CFR part 313 govern the maintenance of pens, driveways and ramps; the handling of livestock, focusing on their movement from pens to slaughter; and the use of different stunning and slaughter methods. Notably, FSIS inspection program personnel verify compliance with the regulations at 9 CFR part 313 through the monitoring of many of the same parameters proposed by the NOSB in 2011, *e.g.*, prod use, slips and fall, stunning effectiveness and incidents of egregious inhumane handling.[13] FSIS has a range of enforcement actions available regarding violations of the humane slaughter requirements for livestock, including noncompliance records, regulatory control actions and suspensions of inspection.

Further, FSIS encourages livestock slaughter establishments to use a systematic approach to humane handling and slaughter to best ensure that they meet the requirements of the HMSA, FMIA, and implementing regulations.[14] With a systematic approach, establishments focus on treating livestock in such a manner as to minimize excitement, discomfort, and accidental injury the entire time they hold livestock in connection with slaughter. Establishments may develop written animal handling plans and share them with FSIS inspection program personnel.

AMS is proposing to add a new § 205.242(b)(2) for those certified organic facilities which slaughter exotic animals and voluntarily request FSIS inspection. FSIS also provides, upon request, voluntary inspection of certain exotic animal species on a fee-for-service basis, under the authority of the Agricultural Marketing Act of 1946. FSIS regulates the humane handling of the slaughter of exotic animals under the regulations at 9 CFR part 352.10, which require that exotic animals be slaughtered and handled in connection with slaughter in accordance with the requirements for livestock at 9 CFR part 313. Violation of these regulations can result in a denial of service by FSIS.

AMS is proposing to add § 205.242(b)(3) to require that all certified organic slaughter facilities provide any FSIS noncompliance records or corrective action records relating to humane handling and slaughter during the annual organic inspection. Not all violations of FSIS regulations result in a suspension of FSIS inspection services. In some cases, FSIS will issue a noncompliance record and the slaughter facility must perform corrective actions to bring the slaughter facility back into compliance. These records must be presented during the annual organic inspection to verify that the slaughter facility is in full compliance and has taken all corrective actions. In addition, AMS recognizes that in the United States some slaughter facilities are regulated by the State for intra-state meat sales. In foreign countries, foreign governments may be the appropriate regulatory authority for humane slaughter inspections. In all cases, the relevant humane slaughter noncompliance records and corrective action records must be provided during the annual inspection.

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[13] FSIS Directive 6900.2, Revision 2, *Humane Handling and the Slaughter of Livestock*, August 15, 2011.

[14] *Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach To Meet Such Requirements*, FSIS, 69 FR 54625, September 9, 2004.

Slaughter and the Handling of Poultry in Connection With Slaughter

AMS is proposing a new § 205.242(c), regarding avian slaughter facilities. Section 202.242(c)(1) would clarify the authority of the NOP, certifying agents and State organic programs to initiate compliance action if certified operations are found to have violated the Poultry Products Inspection Act (PPIA) requirements regarding poultry slaughter, as well as the FSIS regulations regarding the slaughter of poultry and the use of good commercial practices in the slaughter of poultry. Under the PPIA and the FSIS regulations, poultry are defined as chickens, turkeys, ducks, geese, guineas, ratites, and squabs. These species constitute the majority of avian species slaughtered for human food in the United States. However, the organic standards for avian slaughter will apply to all species biologically considered avian or birds. The NOSB did not directly address avian slaughter requirements. However, AMS is proposing avian slaughter requirements for consistency with the proposed mammalian slaughter requirements and to better ensure the welfare of all animals slaughtered by certified operations.

While the HMSA does not apply to poultry, under the PPIA at 21 U.S.C. 453(g)(5), a poultry product is considered adulterated if it is in whole, or in part, the product of any poultry which has died otherwise than by slaughter. FSIS regulations, in turn, require that poultry be slaughtered in accordance with good commercial practices, in a manner that will result in thorough bleeding of the poultry carcass and will ensure that breathing has stopped before scalding (9 CFR 381.65 (b)).

In a 2005 **Federal Register** Notice, FSIS reminded all poultry slaughter establishments that live poultry:

> . . . must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely. Although there is no specific federal humane handling and slaughter statute for poultry, under the PPIA, poultry products are more likely to be adulterated if, among other circumstances, they are produced from birds that have not been treated humanely, because such birds are more likely to be bruised or to die other than by slaughter.[15]

Also in this Notice, FSIS suggested that poultry slaughter establishments consider a systematic approach to handling poultry in connection with slaughter. FSIS defined a systematic approach as one in which establishments focus on treating poultry in such a manner as to minimize excitement, discomfort, and accidental injury the entire time that live poultry is held in connection with slaughter. Although the adoption of such an approach is voluntary, it would likely better ensure that poultry carcasses are unadulterated.

FSIS inspection program personnel verify that poultry slaughter is conducted in accordance with good commercial practices in the pre-scald area of slaughter establishments, where they observe whether establishment employees are mistreating birds or handling them in a way that will cause death or injury or prevent thorough bleeding or result in excessive bruising. Examples of noncompliant mistreatment could include breaking the legs of birds to hold the birds in the shackle, birds suffering or dying from heat exhaustion and breathing birds entering the scalder.[16] Also, in 2015, FSIS issued specific instructions to inspection program personnel for recording noncompliance with the requirement for the use of good commercial practices in poultry slaughter.[17]

AMS is proposing a new § 205.242(c)(2) to require that all certified organic slaughter facilities provide, during the annual organic inspection, any FSIS noncompliance records and corrective action records related to the use of good manufacturing practices in the handling and slaughter of poultry. Not all violations of FSIS regulations result in a suspension of inspection services. In some cases, FSIS will issue a noncompliance record and the slaughter facility must perform corrective actions to bring the slaughter facility back into compliance. These records must be presented during the annual organic inspection to verify that the slaughter facility is in full compliance and has made all corrective actions. In addition, AMS recognizes that in the U.S. some slaughter facilities are regulated by the State for intra-state poultry sales. In foreign countries, foreign governments may be the appropriate regulatory authority for poultry slaughter inspections. In all cases, the relevant noncompliance records and corrective action records must be presented during the annual organic inspection.

Unlike the requirements for livestock slaughter inspection, exemptions from poultry slaughter inspection exist for some poultry which is going to be sold to the public. AMS is proposing handling and slaughter standards for such poultry that is either exempt from or not covered by the inspection requirement of the PPIA. Section 205.242(c)(3) would prohibit hanging, carrying, or shackling any lame birds by their legs. Birds with broken legs or injured feet may suffer needlessly if carried or hung by their legs. Such birds must either be euthanized or made insensible before being shackled.

AMS is proposing new § 205.242(c)(3)(i) through (iii) to require that poultry slaughter operations which are either exempt or not covered by the requirements of the PPIA meet animal welfare standards that non-exempt slaughter operations must meet. AMS is proposing to require that no lame birds be hung on shackles by their feet. AMS is proposing to require that all birds that were hung or shackled on a chain or automated slaughter system be stunned prior to exsanguination. This requirement would not apply to small scale producers who do not shackle the birds or use an automated system and, instead, place the birds in killing cones before exsanguinating the birds without stunning. AMS is proposing a new § 205.242(c)(3)(iii) to require that all birds be irreversibly insensible prior to being placed in the scalding tank.

Requests for Comment on Proposed Slaughter Regulations

As stated above, by proposing that compliance with the FSIS slaughter requirements for livestock and poultry be a condition of organic certification, AMS would be establishing requirements that govern the majority of mammalian and avian species slaughtered by organic operations for human food in the United States. However, the FMIA and PPIA provide for alternatives to Federal inspection of slaughter not addressed by this proposal. Further, the import of meat and poultry products produced by slaughter establishments in other countries raises issues not addressed in this proposal. AMS requests specific comments on these areas:

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[15] *Treatment of Live Poultry Before Slaughter*, FSIS, 70 FR 56624, September 28, 2005.

[16] FSIS Directive 6100.3, Revision 1, *Ante-Mortem and Post-Mortem Poultry Inspection*, April 30, 2009.

[17] FSIS Notice 07–15, *Instructions for Writing Poultry Good Commercial Practices Noncompliance Records and Memorandum of Interview Letters for Poultry Mistreatment*, January 21, 2015.

State-Inspected Slaughter Establishments

Meat and poultry establishments have the option to apply for Federal or State inspection if they are located in states that operate under a cooperative agreement with FSIS. State programs must enforce requirements "at least equal to" those imposed under the FMIA, PPIA and HMSA. However, product produced under state inspection can only be sold or distributed in intra-state commerce, unless a State opts into an additional cooperative program, the Cooperative Interstate Shipment Program. How should AMS regulate livestock slaughter conducted at certified operations inspected by State inspection programs?

Poultry Exemptions

The PPIA exempts from continuous inspection a number of types of establishments that slaughter poultry based on various factors, including volume of slaughter and the nature of operations and sales. In some cases, these establishments would be inspected by State or local government agencies. How should AMS regulate poultry slaughter at certified operations exempt from FSIS inspection?

Meat and Poultry Imports

Under certain conditions, meat and poultry products may be imported into the United States from operations in countries whose food regulatory systems are determined by FSIS to be equivalent with its regulatory system. Equivalence would include meeting the goals of the humane slaughter requirements for livestock and the good commercial practice requirements for poultry slaughter. Verification of compliance with equivalent slaughter requirements would be performed by regulatory authorities in the exporting countries. How should AMS regulate livestock slaughter by certified operations in foreign countries?

F. Other Amendments Considered/Implementation

AMS describes below where we are significantly changing or omitting provisions from the NOSB recommendations. The full NOSB recommendations which serve as the basis for this action are available on the AMS Web site at *https://www.ams.usda.gov/rules-regulations/organic/nosb.* The NOSB recommendations are further described in the Background section of this notice and in the description of the proposed amendments. In a few instances, AMS is incorporating NOSB requirements with minor alterations. For example, AMS is proposing a maximum of two weeks for nest box training of poultry, compared to the five weeks recommended by the NOSB. In general, minor alterations were made to either align with third-party animal welfare standards or reduce potential paperwork burden.

Documentation and Lists. The NOSB recommendations included additional recordkeeping requirements to track practices and animal status. Examples included (1) an annual submissions of lists of all existing and purchased animals, (2) a list of animals with health issues and the treatment provided, and (3) a list of animals that left the operation and why they left. AMS did not include these explicit provisions in order to reduce duplication and minimize the paperwork burden. Producers are already required to maintain records on practices and procedures, and describe monitoring practices and procedures under the current scope of the organic system plan in § 205.201. In addition, the current USDA organic regulations require certified operations to maintain records that are adapted to the particular business the operation is conducting and fully disclose all activities and transactions in § 205.103(b). Therefore, the documentation and recordkeeping provisions that the NOSB recommended would already be met under the current regulations and would be sufficient to verify compliance with the proposed requirements.

Avian indoor space requirements. AMS considered the NOSB recommendation that only the first level of indoor space be included as indoor space; and that perching areas and nest boxes could not be used in the calculation of floor space. In effect this would prohibit aviary-style housing, where chickens occupy multi-levels within a house, in organic poultry production. A sizeable portion of organic egg production currently comes from operations using aviary houses. AMS is not including that provision because the existing and proposed requirements for shelter and indoor space will ensure that these areas accommodate the birds' natural behavior regardless of housing type. To ensure that birds occupying the upper levels would go outside, this proposed rule would require that producers must train birds to go outside, that exit areas are of sufficient size and number to facilitate easy exit and that there are enticements in the outdoor areas to attract birds outside. Finally, AMS understands that aviary houses are not prohibited in other third party animal welfare certification programs.

Livestock health care. AMS considered the NOSB recommendation to require livestock producers to use homeopathic remedies or botanicals before they could use appropriate, synthetic medications. AMS is not implementing this requirement because of the potential that this could delay the use of effective treatments for sick or injured animals. AMS examined the scientific basis for requiring homeopathic remedies or botanicals and found insufficient evidence that these substances would be more effective than conventional treatments to support a blanket requirement for use. The NOSB recommendation did not provide this information. This does not impact an organic producer's ability to use homeopathic remedies or botanicals on livestock as long as they do not contain unapproved synthetics or prohibited naturals, such as, strychnine from *Nux vomica.* However, if livestock are sick or injured, organic producers must not delay use of an appropriate medical treatment by administering an unproven remedy.

Slaughter performance standards. The NOSB recommended a series of performance standards for slaughter facilities which would have required extensive paperwork for the facilities. However, considering the current shortage of organic livestock slaughter facilities, AMS is proposing the requirements in this document with the goal of limiting the burden on extant organic slaughter facilities. AMS regularly receives comments from organic livestock producers about the lack of availability of organically certified slaughter facilities. Certified organic livestock slaughtered in a non-certified slaughter facility cause the resulting meat to lose organic status. AMS consulted with FSIS about the specific NOSB performance standards and determined that most of these additional requirements would be duplicative. This duplication would have increased the paperwork burden and cost of inspection without increasing animal welfare. AMS was concerned that such an increased burden with no increase in animal welfare would further limit the availability of certified organic slaughter facilities. Below is a table listing some of the NOSB recommended slaughter performance standards and the corresponding FSIS regulations.

NOSB Recommendation or AMS preliminary draft proposed regulatory text	FSIS Response
Mammalian Slaughter	
(1) Slaughter plants must have non-slip flooring	This provision is covered by 9 CFR 313.1(b)—Floors of livestock pens, ramps, and driveways shall be constructed and maintained so as to provide good footing for livestock. Slip resistant or waffled floor surfaces, cleated ramps, and the use of sand, as appropriate, during winter months are examples of acceptable construction and maintenance.
(2) Gates in the live animal area must swing freely, latch securely, and be free of sharp or otherwise injurious parts. Gates are never to be slammed on animals.	This provision is covered by 9 CFR 313.1(a)—Livestock pens, driveways and ramps shall be maintained in good repair. They shall be free from sharp or protruding objects which may, in the opinion of the inspector, cause injury or pain to the animals.
(3) Adequate lighting must be in place to allow animals to be easily observed.	This provision is covered by—9 CFR 309.1(a)—All livestock must be examined and inspected on day of slaughter. This requires that lighting is sufficient for inspectors to easily observe the animals.
(4) Livestock slips and falls must be scored in all parts of the facility including unloading areas, holding areas, chutes, stun box and the stunning area. No more than 1 percent of livestock may slip and no more than 1 percent of livestock may fall at any of the parts of the facility.	This provision is covered by—9 CFR 313.2(a)—Driving livestock from the unloading ramps to the holding pens and from the holding pens to the stunning area shall be done with a minimum of excitement and discomfort to the animals. Livestock shall not be forced to move faster than a normal walking speed. Scoring provided for in FSIS Directive 6910.1—Acceptable-No falls; Acceptable with reservations-less than 1 percent.
(5) Humane treatment procedures for handling immobile and fatigued animals upon arrival at the slaughter plant are in place. Handlers may use sleds and place livestock in the bucket, but may not push them up against a wall, gate, or any other object.	This provisions is covered by—9 CFR 309.3(e)—Non-ambulatory cows are to be euthanized—). FSIS has proposed to require that non-ambulatory veal calves need to be euthanized. Other livestock are addressed in 9 CFR 313.2(d)—Disabled livestock and other animals unable to move.
(6) Electric prods are available if needed for human safety or for medical use, i.e., in an effort to save down animals. Prod use must stop after three shocks interspersed with rest periods or if the animal does not attempt to rise. Prods may never be applied to sensitive parts of the animal: eyes, nose, ears, rectum, or reproductive organs. Prods may not be used on animals less than twelve months of age.	This provision is covered—9 CFR 313.2(b)—Electric prods, canvas slappers, or other implements employed to drive animals shall be used as little as possible in order to minimize excitement and injury. Any use of such implements which, in the opinion of the inspector, is excessive, is prohibited. Scoring in FSIS Directive 6910.1.
(7) Plans for euthanasia of sick livestock must be described. Euthanasia must only be performed by trained personnel. Euthanasia equipment must be properly stored at slaughter plants and maintained. Lists of all animal euthanized and the reason for euthanasia must be maintained.	This provision is covered by 9 CFR 309.13—Condemned animals are to be killed by establishment and not taken into official establishment.
(8) No more than 3 percent of cattle vocalize as they move through the restrainer, stunning box and stunning area. No more than 5 percent of hogs squeal in the restrainer due to human provocation. No more than 5 percent of livestock vocalize when a head holder is used during stunning or slaughter. No more than 1 percent of hogs vocalize due to hot wanding. Electrodes must not be energized before they are in firm contact with the animal.	FSIS does not have a vocalization standard. Vocalization is only as evidence that animal was not properly stunned in FSIS Directive 6910.1.
(9) Conscious, sensible mammals must never be restrained by suspending them by their limbs. One hundred percent of animals are insensible prior to being hung on the bleed rail.	This provision is covered by—9 CFR 313.2(f)—Stunning methods approved in 313.30 shall be effectively applied to animals prior to their being shackled, hoisted, thrown, cast, or cut. FSIS Directive 6910.1 Stunning efficacy must be 100 percent.
(10) One hundred percent of mammals are insensible prior to being hung on the bleed rail.	This provisions is covered by—9 CFR 313.2(f)—Stunning method approved in 9 CFR313.30 shall be effectively applied. This provision is also covered in FSIS Directive 6910.1—The DVMS is to observe and verify that animals are unconscious and insensible after stunning and throughout the process of shackling, hoisting, cutting, and bleeding.
(11) Ninety-five percent of cattle and sheep are effectively stunned with one shot via captive bolt or gunshot. Ninety-nine percent of electrodes are placed correctly when livestock are stunned with electricity.	This provisions is covered by—9 CFR 313.15(a)(3), 313.16(a)(3), 313.30(a)(3)—Requires that animal be in state of unconsciousness immediately after first stun. This provision is also covered in FSIS Directive 6910.1—Acceptable stunning is 100 percent. Acceptable with reservations is effectiveness of greater than 99 percent but less than 100 percent.
(12) When carbon dioxide (CO2) or other controlled atmosphere stunning systems, including gondolas or other conveyances for holding a group of animals, are used, animals must be able to lie down or stand without being on top of one another. When head to tail conveyor systems are used, this score may be omitted.	This provision is covered by 9 CFR 313.5.
Avian Slaughter	Avian slaughter is addressed in FSIS Directives 6100.3 and 6910.1. Operations meet good commercial practices, 9 CFR 381.65(b).
(1) No lame birds may be shackled, hung or carried by their legs	This provisions is—included as Mistreatment of poultry, which is addressed in FSIS Directive 6100.3—establishment employees must not mistreat birds or handling them in a way that will cause death or injury or prevent thorough bleeding or result in excessive bruising.

NOSB Recommendation or AMS preliminary draft proposed regulatory text	FSIS Response
(2) All birds shackled on a chain or automated system must be stunned prior to exsanguination.	This provisions is addressed in FSIS Directive 6910.1
(3) All birds must be irreversibly insensible prior to being placed in the scalding tank.	This provisions is covered by 9 CFR 381.65(b)—Poultry must be slaughtered in accordance with good commercial practices in a manner that will result in thorough bleeding of the carcasses and ensure that breathing has stopped before scalding.

Implementation. The provisions of this proposed rule, except for the avian outdoor space requirements in § 205.241(c), would be implemented one year after the publication date of the final rule. AMS chose a one-year period for operations and certifying agents to become familiar with the requirements and make modifications to their practices, *e.g.*, updating organic system plans, training staff.

AMS is proposing two distinct implementation timeframes for the avian outdoor space requirements. First, three years after the publication of the final rule any non-certified poultry house or facility would need to comply in order to obtain certification. This would include facilities that are not certified at the three-year mark, but subsequently become part of a certified operation. The three-year period would allow producers to transition the outdoor space to organic production.

Second, all poultry houses and facilities certified prior to the three-year mark would need to comply within five years of the publication of the final rule. AMS is choosing a five- year compliance period to reduce the economic burden on existing organic producers, without unduly delaying the implementation of practices for improved animal welfare. As explained in the Regulatory Impact Analysis, the five-year period reflects the average time remaining to fully depreciate an average barn for laying hens. Since AMS expects that the costs associated with this rule will fall primarily on organic egg producers, the five-year period will allow the average producer to write off the capital costs on their tax returns.

IV. Related Documents

Documents related to this proposed rule include the Organic Foods Production Act of 1990, as amended, (7 U.S.C. 6501–6522) and its implementing regulations (7 CFR part 205). The NOSB deliberated and made the recommendations described in this proposal at public meetings announced in the following **Federal Register** Notices: 67 FR 19375 (April 19, 2002); 67 FR 54784 (August 26, 2002); 67 FR 62949 (October 9, 2002); and 68 FR 23277 (May 1, 2003). NOSB meetings are open to the public and allow for public participation.

AMS published a series of past proposed rules that addressed, in part, the organic livestock requirements at: 62 FR 65850 (December 16, 1997); 65 FR 13512 (March 13, 2000); and 71 FR 24820 (April 27, 2006). Past final rules relevant to this topic were published at: 65 FR 80548 (December 21, 2000); and 71 FR 32803 (June 7, 2006).

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated as a "significant regulatory action" under section 3(f) of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Need for the Rule

AMS is proposing this rulemaking to maintain consumer confidence in the high standards represented by the USDA organic seal. Specifically, this action is necessary to augment the USDA organic livestock production regulations with robust and clear provisions to fulfill a purpose of the OFPA, to assure consumers that organically-produced products meet a consistent and uniform standard (7 U.S.C. 6501). The added specificity would further the process, initiated with the enactment of OFPA, to develop detailed standards for organic livestock products.[18] OFPA mandates that detailed livestock regulations be developed through notice and comment rulemaking and intends for NOSB involvement in that process (7 U.S.C. 6508(g)). In 2010, AMS published a final rule (75 FR 7154, February 17, 2010) clarifying the pasture and grazing requirements for organic ruminants, which partially addressed OFPA's objective for more detailed standards. This present rulemaking would extend that level of detail and clarity to all organic livestock and ensure that organic standards cover their entire lifecycle.

AMS issued an administrative appeal decision in 2002 that allowed the certification of one operation that used porches as outdoor access to protect water quality. This Decision served to address a fact-specific enforcement issue. Some certifying agents used this appeal decision to grant certification to poultry operations using porches to provide outdoor access. Thereafter, certification and enforcement actions have remained inconsistent and contributed to wide variability in living conditions for organic poultry, as well as consumer confusion about the significance of the organic label with regard to outdoor access. In accordance with OFPA, this proposed action will clarify USDA statutory and regulatory mandates and establish consistent, transparent, and enforceable requirements. Further, it will align regulatory language and intent to enable producers and consumers to readily discern the required practices for organic poultry production and to differentiate the products in the marketplace.

This proposed rule would add requirements for the production, transport and slaughter of organic livestock. Most of these align with current practices of organic operations (*e.g.*, prohibiting or restricting certain physical alterations, euthanasia procedures, housing for calves and swine). The proposed provisions were developed by the NOSB in consideration of other animal welfare certification programs, industry standards, input from organic producers, and input from public comment.[19] According to a survey by the Organic Egg Farmers of America, 76 percent of organic egg production in the U.S. participates in private animal welfare certification programs.[20] Therefore, AMS expects that many of the requirements in this proposed rule are already implemented and will not produce significant costs. Producers may incur some costs such as increased paperwork (see the Paperwork Reduction Act analysis below), building additional fences, providing shade in outdoor areas, or creating more doors in poultry houses.

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[18] The Senate report that accompanied the OFPA legislations set the expectation for greater specificity in the future for organic livestock standards as the industry matured: "More detailed standards are enumerated for crop production than for livestock production. This reflects the extent of knowledge and consensus on appropriate organic crop production methods and materials. With additional research and as more producers enter into organic livestock production, the Committee expects that USDA, with the assistance of the National Organic Standards Board will elaborate on livestock criteria." Senate Committee on Agriculture, Forestry and Nutrition, *Report of the Committee on Agriculture, Forestry and Nutrition to Accompany S. 2830 Together with Additional and Minority Views, 101st Congress,* S. REP. NO. 101–357, at 289 (1990).

This proposed action includes provisions to facilitate consistent practices regarding stocking densities and outdoor space at organic poultry operations. The outdoor space issues are divisive and controversial among producers and other stakeholders, and, therefore, the scope of this analysis focuses on impacts to the organic poultry sector. The current practices of organic poultry operations to provide outdoor access and minimum indoor and outdoor space per bird vary widely. This disparity causes consumer confusion about the meaning of the USDA organic label, threatens to erode consumer confidence in the organic label more broadly, and perpetuates unfair competition among producers. This rule would enable AMS and certifying agents to efficiently administer the NOP. In turn, the consistency and transparency in certification requirements will facilitate consumer purchasing decisions.

Consumer surveys indicate the need for more precise animal welfare standards within the USDA organic regulations. A 2014 Consumer Reports Organic Food Labels Survey noted that half of consumers believe that organic chicken living space meets minimum size requirements; 68 percent believe there should be minimum size requirements. Further, 46 percent believe organic chickens went outdoors; 66 percent believe the chickens should have gone outdoors.[21] A second survey, designed by the American Society for the Prevention of Cruelty to Animals, showed that 63 percent of respondents believe that organic livestock have access to pasture and fresh air throughout the day and 60 percent believe that organic livestock have significantly more space to move than non-organic animals.[22]

The majority of organic poultry producers also participate in private, third-party verified animal welfare certification programs.[23] These certification programs vary in stringency, particularly for outdoor access requirements. Such widespread participation among organic poultry producers is evidence that consumers want additional label claims to provide information about animal welfare practices. This proposed rule would align consumer expectations and the production practices required to make an organic label claim regarding animal welfare for poultry.

The broad latitude afforded by the existing USDA organic regulations leads to wide variance in production practices within the organic egg sector (*e.g.*, a porch in contrast to extensive outdoor area with diverse vegetation). These differences are not discernable to consumers through use of the USDA organic label. Consumers are increasingly aware of these varying outdoor production practices and either seek specific brands of organic eggs based on information about living conditions at individual farms, or seek animal welfare labels in addition to the USDA organic seal.

AMS believes that many livestock and poultry producers would prefer to use the organic label to convey information about their practices to consumers. While sales of organic products, including eggs and poultry, continue to increase annually, surveys designed to measure consumer trust in the organic label reveal consumer confusion about the meaning of the label. A report on organic food and beverage shoppers states that one-third of the respondents indicated that the term "organic" has no real value or definition.[24] The study concludes that consumers are confused by the various marketing terms, such as "natural," and advises organic brands to convey more information to consumers. AMS believes that in the context of organic livestock and poultry production, particularly egg production, variations in practices result in consumers receiving inadequate and inconsistent information about livestock products. This is supported by the consumer survey results described above. By establishing clear and equitable organic livestock and poultry standards, this rule would help organic producers to more effectively market their products. It would (1) provide for consistent information to consumers about animal living conditions to distinguish organic products from competing labeling terms in the market, and (2) alleviate the need for multiple certifications and eliminate duplicative paperwork, on-site inspections and additional costs.

In 2009 and 2011, the NOSB issued recommendations, as authorized by OFPA, for additional requirements to support animal welfare. In the process of developing these recommendations, the NOSB consulted with and received numerous public comments from authorities in the fields of animal welfare, consumers, livestock producers and certifying agents. AMS developed this proposed rule in response to the NOSB recommendations and stakeholder feedback.

This action also responds to the 2010 USDA Office of Inspector General (OIG) audit findings of inconsistent applications of the USDA organic regulations for outdoor access for livestock. OIG noted the absence of regulatory provisions covering the length (*i.e.*, hours per day) of outdoor access and the size of the outdoor area. Among organic poultry producers, OIG observed wide variation in the amount of outdoor space provided. As recommended by OIG, AMS published draft guidance, Outdoor Access for Organic Poultry, for public comment (75 FR 62693, October 13, 2010).[25] The draft guidance advised certifying agents to use the 2002 and 2009 NOSB recommendations as the basis for certification decisions regarding outdoor access for poultry. The draft guidance informed certifying agents and producers that maintaining poultry on soil or outdoor runs would demonstrate compliance with the outdoor access requirement in § 205.239. However, after extensive comments by producers, certifying agents and other stakeholders, including the request for rulemaking, AMS determined to pursue rulemaking to clarify outdoor access for poultry and did not finalize the guidance.

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[19] NOSB, December 2011. Formal Recommendation of the National Organic Standards Board to the National Organic Program, Animal Welfare and Stocking Rates, Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

At the NOSB meeting in November 2010, the NOSB explained how the recommended handling, transport and slaughter provisions aligned with the American Meat Institute's animal handling guidelines. These guidelines cover handling, transportation and slaughter and are standard industry practices. The transcripts from that meeting are available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/meetings.*

[20] Organic Egg Farmers of America (OEFA), Organic Poultry Industry Animal Welfare Survey, 2014.

[21] Consumer Reports National Research Center, Organic Food Labels Survey, March 2014. Nationally representative phone survey of 1,016 adult U.S. residents.

[22] This phone survey was administered to 1,009 adults in October 2013.

[23] Organic Egg Farmers of America, 2014.

[24] Mintel Group Ltd., "Organic Food and Beverage Shoppers—US—March 2015." March 2015.

[25] The draft guidance was published on March 10, 2013 and posted on the NOP Web site.

Baseline

This baseline focuses on the current production of organic eggs and the market for this commodity. AMS used multiple data sources, listed below, to describe the baseline and inform our assumptions for the cost analysis:

- 2011–2014 Organic Industry Surveys, published by the Organic Trade Association (OTA). The Nutrition Business Journal conducts this annual survey on behalf of OTA to summarize market information and trends within the organic industry across food and non-food sectors.[26]
- 2014 Organic Survey, National Agricultural Statistics Service (NASS).[27] This survey reports acreage, production and sales data for organic crops and livestock.
- 2011 Organic Production Survey, National Agricultural Statistics Service (NASS).[28] This survey reports acreage, production and sales data for organic crops and livestock.
- The National Animal Health Monitoring and Surveillance (NAHMS) 2013 Layers study.[29] This study includes a section on organic egg production in the U.S., which provides an overview of various practices on organic layer operations.
- AMS also used summary information from the USDA Livestock, Poultry and Grain Market News Service (Market News) egg and broiler market news reports from 2010 to 2014.[30] [31]
- Organic Egg Farmers of America (OEFA), Organic Poultry Industry Animal Welfare Survey, 2014. OEFA independently conducted and submitted the results of a survey of organic egg and broiler producers. There were 157 survey responses, representing 8.33 million organic layers (77 percent of organic production) and 12 million organic broilers (62 percent of production). The survey was distributed to certified organic poultry producers in July 2014.
- Egg Industry Center (EIC) Survey of U.S. Organic Egg Production. EIC independently conducted and submitted this survey which was distributed to organic egg producers with at least 30,000 hens. Respondents totaled 23, representing 5.07 million hens.
- Economic Impact Analysis of Proposed Regulations for Living Conditions for Organic Poultry, Phase 3 Report by T. Vukina, K. Anderson, M.K. Muth and M. Ball. This report, prepared for the NOP, estimated the costs for implementing the NOSB recommendation on avian living conditions. The analysis in this proposed rule essentially updates and expands the model used by Vukina et al., to estimate current costs and different producer response scenarios.

The Organic Egg and Poultry Market

According to the 2015 Organic Trade Association (OTA) Industry Survey, U.S. sales of organic food, fiber, and agricultural products totaled over $39.1 billion in 2014, up 11 percent from 2013.[32] Sales of organic eggs reached $514 million in 2014, an increase of 17 percent over the previous year. This sector has experienced continued double-digit sales growth since 2010, as shown in Table 2. In addition, the average retail price for one dozen, organic brown eggs has climbed 16.3 percent on average, each year between 2010 and 2014. The rate of growth may be affected by several factors, including: (1) The price gap between organic and non-organic eggs based on the cost of organic and non-organic feed—this may slow or increase growth depending on size of the gap; (2) factors other than price driving consumer purchasing decisions, *e.g.*, concerns about production practices; (3) competition from cage-free labels; and (4) accuracy in forecasting consumer demand.

In 2014, poultry sales ($453 million) grew nearly 13 percent and accounted for the greatest portion (60 percent) of the organic meat, poultry and fish market sector. As shown in Table 2, annual sales of organic poultry have climbed steadily since 2010, while retail prices for organic boneless, skinless breasts have fallen.[33] In comparison to beef, pork, and other meat products, poultry faces fewer obstacles to growth because feed for poultry is cheaper and time to market is shorter.[34]

TABLE 2—ORGANIC EGGS AND BROILERS MARKET—RETAIL SALES

Subcategory	Year	Annual sales (million $)	Percent growth	Average retail price [b] (dozen eggs [c]/ boneless, skinless breast)
Eggs	[a] 2014	514	17	4.16.
	2013	439	16.9	4.16.
	2012	375	17.5	4.11.
	2011	319	20.2	3.90.
	2010	266	10.4	3.85.
Poultry	[a] 2014	453	12.9	7.37/lb.
	2013	401	9.3	7.20/lb.
	2012	367	10.8	7.38/lb.
	2011	331	12.5	7.49/lb.

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[26] Organic Trade Association (OTA)/Nutrition Business Journal, 2014 Organic Industry Survey. Nutrition Business Journal conducted a survey between Jan 27, 2014 and April 5, 2014 to obtain information for their estimates. Over 200 organic firms responded to the survey. NBJ used secondary data from SPINS, Nielsen, and IRI to supplement the survey and build market statistics.

[27] The 2014 Organic Survey is accessible at: *http://www.agcensus.usda.gov/Publications/Organic_Survey/*.

[28] The 2011 Organic Production Survey is accessible at: *http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1859*.

[29] The NAHMS Poultry studies may be found at the following link: *http://1.usa.gov/1IkWw22*.

[30] USDA AMS LPS Market News (Market News) 2010–2014 Egg Market News report. Available on the Market News Web site at: *http://1.usa.gov/1vlDNgy*.

[31] USDA AMS LPS Market News (Market News) 2010–2014 Broiler Market News report. Available on the Market News Web site at: *http://1.usa.gov/1uHsme1*.

[32] OTA, 2015 Organic Industry Survey.

[33] Retail prices for organic whole fryers per pound have fluctuated between 2010 and 2014, peaking in 2012 and falling the following two years.

[34] OTA, 2010–2014 Organic Industry Surveys.

TABLE 2—ORGANIC EGGS AND BROILERS MARKET—RETAIL SALES—Continued

Subcategory	Year	Annual sales (million $)	Percent growth	Average retail price [b] (dozen eggs [c]/ boneless, skinless breast)
	2010	294	6.3	7.54/lb.

[a] As of September 5, 2014.

[b] Based on supermarket advertised sale prices reported by AMS Livestock, Poultry and Seed Market News (see footnotes 19 and 20).

[c] Brown, Large, Grade A.

Table 3 shows the geographical distribution of organic egg and broiler production in the U.S., based on the USDA 2014 Organic Survey. There are an estimated 722 organic egg producers and 245 organic broiler operations. Five states are responsible for over one-third of organic egg production. Pennsylvania and California operations comprise only 7.5 percent of the total number of organic poultry producers, but produce 35 percent and 32 percent, respectively, of organic eggs. California also has 6.5 percent of U.S. organic broiler operations, which produce about 54 percent of organic broilers. Conversely, the production from states which report higher numbers of broiler operations, such as Wisconsin and Maine, is less than 1 percent of production. Several states do not report total production volume for broilers to protect confidentiality. Given these omissions, the data does not provide details of nearly 50 percent of state level production of organic broilers.

TABLE 3—TOP STATES WITH ORGANIC EGG AND POULTRY OPERATIONS COMPARED TO PRODUCTION

Organic Eggs [a]

	Number of organic egg operations	Percent of US organic egg operations	Total production (dozens)	Percent of US organic egg production
United States	722		166,313,847	
Top 5 States [c]	334	46.1	61,157,980	36.7
Wisconsin	97	13.3	7,450,488	12
Iowa	74	10.2	8,628,066	14
Maine	55	7.6	4,051,040	7
Pennsylvania	54	7.5	21,623,599	35
California	54	7.5	19,449,787	32

Organic Broilers [a]

	Number of organic broiler operations	Percent of US organic broiler operations	Total production (birds)	Percent of US organic broiler production [e]
United States	245		43,255,401	
Top 5 States [c]	130	53	[d] 23,319,734	53.9
Wisconsin	32	13	21,104	0
Pennsylvania	30	12.2	N/A	N/A
New York	28	11.4	N/A	N/A
Maine	24	9.8	23,134	0
California	16	6.5	23,275,496	53.8

[a] **Source:** National Agricultural Statistics Service, "2014 Organic Survey."

[c] States ranked by both number of farms and total production.

[d] This total does not include production for Pennsylvania and New York. The 2014 Organic Survey does not disclose the broiler production data for those states. In order to protect confidentiality, any tabulation which identifies data reported by a respondent or allows a respondent's data to be accurately estimated is not disclosed.

[e] There were other states that had higher production than the states reporting in this table, but had fewer organic broiler operations. Kentucky produced 27,685 broilers, but only had 7 organic broiler operations. Michigan produced 13,018 broilers, but had only 6 organic broiler operations.

Alternatives Considered

AMS considered alternatives to the proposed action. Specifically, AMS reviewed options for indoor stocking density and outdoor space requirements for layers and implementation timeframes. For each alternative, AMS examined how the provision aligned with the animal welfare objectives supported by the organic community and the potential costs and benefits to organic producers. The options are presented and discussed below.

TABLE 4—INDOOR STOCKING DENSITY OPTIONS—LAYING HENS

Alternative	Basis
Option 1—Minimum of 2.0 ft² per layer	Consistent with the NOSB recommendation. This would provide more space per bird than private animal welfare standards.
Option 2—Minimum of 1.8 ft² per layer	Provides increased space for birds while curtailing costs. On par with most stringent private third-party animal welfare standard.
Option 3—maximum 3.0 to 4.5 lbs/ft² depending upon the housing system.[a] (Proposed rule)	Consistent with current industry practice for many organic egg producers. Aligns with the majority of private third-party animal welfare certification programs.

[a] This is equivalent to 1.0–1.5 ft² per bird. The reasoning and method for converting to pounds per square foot is discussed in the preamble section C for Avian Living Conditions.

The NOSB recommended indoor and outdoor space metrics for poultry as a component of broad measures to enhance animal welfare practices on organic livestock operations. Citing consumer demand for humane treatment of livestock, the proliferation of animal welfare certification labels, organic standards of major trading partners (*e.g.,* Canada, the European Union), and varying practices among organic producers, the NOSB determined it was necessary to set maximum stocking densities for organic poultry.[35] The NOSB aimed to develop stringent, comprehensive, and consistent animal welfare requirements for organic livestock and poultry production that would meet consumer demand and foster equitable certification decisions and fair competition among producers, consistent with the objectives of OFPA. The costs and benefits of the proposed alternatives are discussed in more detail in the next section below.

Indoor stocking density. AMS considered a range of indoor stocking densities, including 2.0 ft²/bird or 1.8 ft²/bird for all layer operations, or 1.0—1.5 ft²/bird depending on the housing system. The NOSB recommended a minimum of 2.0 ft² per hen indoors and explained that the metric could be adjusted during colder months to allow producers to increase the density to maintain heat in poultry houses. In order to examine the difference in costs, AMS also considered setting the indoor stocking density at 1.8 ft² to parallel the most stringent indoor stocking density of a private animal welfare certification standard.

AMS is not pursuing the 2.0 ft²/bird or 1.8 ft²/bird options. The estimated costs to implement a 1.8 ft²/bird indoor stocking density range between $70 million to $260 million annually depending on various producer response scenarios.[36] [37] AMS considered the estimated costs associated with the alternatives for reduced stocking densities would be unduly burdensome on individual organic egg producers and could cause a sizeable reduction in the supply of organic eggs. We believe that requiring 2.0 ft² or 1.8 ft² per bird would adversely impact most organic egg production and likely cause approximately 80 percent of current organic egg production to exit the organic market. Reducing the number of layers to comply with those stocking densities would result in lost revenue and increased marginal operating costs from the reduced number of birds or compel producers to incur high capital costs for building additional housing to accommodate existing production levels.

AMS is proposing to set the indoor stocking density based on housing systems as follows: 4.5 lbs/ft² (equivalent to 1.0 ft² per bird) for pastured poultry and aviary/multi-level housing; 3.75 lbs/ft² (1.2 ft² per bird) for poultry houses with slatted/mesh flooring systems and 3.0 lbs/ft² (1.5 ft² per bird) for poultry houses with floor litter. These metrics are consistent with the standards of a common third-party animal welfare certification program. We expect that most organic poultry producers currently meet or exceed those levels. This proposed rule would require certain features for the housing, including perches and flat roosts and space for dust bathing and self-isolation. These measures, in conjunction with the stocking density, support the natural behaviors and well-being of the birds. The tiered indoor stocking densities will foster a consistent level of poultry living conditions. It would also ease any disparate burden on producers in colder climates while maintaining consistency throughout the industry and meeting consumer expectations for organic poultry production.

Outdoor stocking density. The USDA organic regulations require that livestock have year-round access to the outdoors, fresh air, direct sunlight and shade (§ 205.239(a)). Other than identifying circumstances when livestock may be temporarily confined (§ 205.239(b)), the regulations do not provide details on the frequency or duration of outdoor access or size of the outdoor space. Outdoor access is integral to organic production, and consumers expect that it is standard practice throughout the organic egg sector. Notably, outdoor access is not mandatory for all third-party animal welfare certification programs. AMS is proposing to set outdoor stocking densities for poultry and to clarify whether porches are acceptable for outdoor access.

AMS is proposing that layers must have a maximum of 2.25 pounds/ft² in the outdoor area.[38] Under this proposed rule, outdoor areas would need to be large enough to hold all birds simultaneously with a maximum of 2.25 pounds/ft². This is consistent with the

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[35] The European Union Organic Standards and the Canadian Organic Regime Standards specify indoor and outdoor stocking densities for various types of livestock, including laying hens: 6 birds/m² indoors; 4 birds/m² outdoors. After converting the units for the stocking densities recommended by the NOSB, the metrics are comparable to the EU and Canada: the NOSB would require slightly more space per bird indoors and slightly less outdoors. This proposed rule would adjust the indoor stocking density to allow more birds to occupy a given unit of indoor area.

[36] AMS evaluated the costs for 4 different producer response scenarios: (1) All producers incur costs to maintain their current level of production; (2) some producers maintain their current level of production and some transition to the cage-free egg production; (3) all producers comply with the proposed rule by maintaining their existing facilities (and reduce the number of birds to meet the indoor stocking density); and, (4) some producers comply by maintaining existing facilities while other producers transition to cage-free egg production. Producers who exit to the cage-free market would be expected to have lower net returns, compared to organic eggs, as discussed below in the Costs section.

[37] These cost were projected over a 10-year period versus a 13-year period which was used for the estimated costs for the proposed rule provided in the section below. AMS used a 10-year period in the initial cost estimates to compare various alternatives.

[38] As discussed above, this is approximately equivalent to 2.0 square feet per bird. AMS changed the units to pounds per square foot so that the actual space per bird is similar across birds of different species or breeds.

NOSB recommendation for outdoor stocking density.[39] The NOSB selected that minimum threshold to protect soil quality and minimize parasite loads.

The NOSB also stipulated that outdoor access areas be soil-based and have at least 50 percent vegetation cover. While AMS believes that vegetation is an important feature to encourage birds to use outdoor areas, we are not proposing a minimum vegetation requirement, as that may be difficult to maintain in certain locations with drier climates. However, AMS is proposing to require enrichment of the outdoor space which could be met with 50 percent vegetative cover. This proposed rule would require that the outdoor area have at least 50 percent soil. Chickens use soil for dust bathing, and this would support the NOSB's objective to encourage birds to occupy outdoor areas. This soil threshold would also uphold consumer expectations for outdoor access, while providing some flexibility for operations which currently have concrete or other surfaces in the outdoor area. AMS did not estimate the potential cost to implement this proposed requirement due to wide variability in the site-specific conditions. AMS does make assumptions about whether producers have the adequate land base to accommodate the outdoor stocking density and we have estimated the costs for obtaining needed land as discussed below. However, even producers who have the adequate land base may need to modify that area (e.g, install fencing) to provide access to the soil.

AMS considered proposing minimum space requirements of 2.25 pounds/ft^2 to accommodate either 10 percent, 50 percent or 100 percent of layers in a house to be outdoors at one time. AMS examined the 10 and 50 percent alternatives based upon information that only a portion of a flock is outdoors at any given time. Under the 10 and 50 percent scenarios, the maximum stocking density would be exceeded whenever more than 10 percent or 50 percent of the flock is outdoors. As an example, in the 10 percent scenarios, if 20 percent of the flock was outside, then stocking density would be effectively reduced by 50 percent. Requiring the outdoor space to accommodate only 10 percent of a flock would sanction the status quo, and operations which provide the least amount of outdoor area would be permitted to maintain those conditions.

The monetary costs of a 10 percent or 50 percent alternative would be substantially lower than the estimated costs of the proposed rule. As discussed below, the increased outdoor access requirements for all birds drives the costs of the proposed rule by reducing production volume and increasing operating expenses (land and feed). Under these alternatives, most organic producers would not need to acquire additional land and birds would have reduced exposure to predators and parasites, However, selecting the lower cost alternative would undermine the preferences of many organic egg producers and consumers; the success of the organic label marketing program depends upon practices which reflect the preferences of the participants and consumers who chose organic eggs in the marketplace. Adequate outdoor access is a core concern among organic consumers; outdoor areas that accommodate relatively few birds would not align with consumer expectations and would perpetuate an uneven playing field among producers. Further, the higher density may be detrimental to soil quality and parasite loads.

Requiring that the outdoor area accommodate half of the flock would not adequately provide for each bird to have outdoor access with space to express natural behaviors. This could work as a disincentive for birds to go outside and does not support the intent of the USDA organic regulations that livestock use outdoor areas. Further, consumers expect all organic livestock to have access to and use outdoor space, and this approach could have unknown, but likely negative, impacts on consumer confidence in the organic egg sector. Given the likelihood that more than half of a flock would use the outdoor area simultaneously and consistently, we believe that resulting crowding in the outdoor area from a higher stocking density would ultimately deter birds from occupying the outdoor space. Together, the proposed stocking density requirements and the requirements for birds to be outdoors at an early age, including that these areas provide shade and soil access, should encourage more than half of the flock to regularly occupy this space.

Porches as outdoor areas. AMS also considered whether porches should count as outdoor space. In general, a porch is a screened-in area with a solid roof overhead. AMS estimates that at least 50 percent of organic egg production comes from operations that use porches exclusively to provide outdoor access. The use of porches for outdoor access on organic operations is contentious. The practice of using porches to provide outdoor access in organic poultry operations gained popularity following a 2002 AMS administrative appeal decision which allowed the certification of one poultry operation planning to provide outdoor access via porches. This appeal decision was used by some poultry producers to justify that porches may satisfy the requirement to provide outdoor access for poultry under the USDA organic regulations. Organic production systems utilizing porches to provide outdoor access have increased since that time.

In 2011, the NOSB, with the support of numerous producer and consumer stakeholders, unanimously recommended that enclosed, covered porches should not be considered outdoor access. Consistent with that recommendation, this proposed rule specifically defines "outdoors" to exclude porches. The stipulation that porches are not outdoor space is consistent with the U.S. Food and Drug Administration (FDA) position. In July 2013, FDA published draft guidance on outdoor access under the FDA 2009 Prevention of Salmonella Enteritidis in Shell Eggs regulations.[40] The draft guidance states that structures attached to the poultry houses, such as porches, would be subject to testing and sanitizing in the same way as the actual poultry house, while the ground and other outdoor areas would not be subject to those testing and sanitizing requirements. Notably, FDA's draft guidance states that covered porches are part of the poultry house.

Proponents of porches state that they are essential for biosecurity to protect poultry from predation and disease that could result from contact with wild animals or feces. However, producers, consumers and other stakeholders who oppose porches state that porches provide a competitive advantage by reduced mortality to predator loss and decreased feed conversion rates (less feed to produce a dozen eggs). Opponents have challenged the contention that porches are essential to biosecurity, citing other disease control methods, such as the removal of vegetation directly outside the poultry house, the use of netting over outdoor areas and placing footbaths at the entrances to houses. Further, the outbreak of Highly Pathogenic Avian Influenza (HPAI) that began in December 2014 in the U.S. was detected in 211 commercial flocks, which are primarily exclusively indoor operations. HPAI was detected in 21 backyard flocks which generally provide ample outdoor access.[41]

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[39] The NOSB recommended a range of 2.0 ft^2—5.0 ft^2 per bird in the outdoor areas, explaining that a minimum of 5 ft^2 would ensure the availability of vegetation to birds during the growing season. As discussed in the paragraph below, AMS is not adopting a vegetation requirement for the outdoor area. In addition, we believe that a minimum 5.0 ft^2/bird outdoor stocking density would be untenable because of the additional land needed.

[40] Draft Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation (Layers with Outdoor Access) *http://www.fda.gov/food/guidanceregulation/guidancedocuments regulatoryinformation/eggs/ucm360028.htm.*

AMS agrees with FDA that porches are not outdoor space. They do not provide contact with soil nor align with consumer expectations and NOSB recommendations for outdoor access. Codifying the allowance of porches as outdoor space in organic production would not address the wide disparity in outdoor access provisions within this sector. This disparity leads to consumer confusion about husbandry practices and places some producers at a competitive disadvantage, and thus would not meet the OFPA's intent to assure consumers that organically produced products meet a consistent and uniform standard. AMS is concerned that allowing porches as the sole area for outdoor access could erode consumer demand for organic eggs and lead to an exodus of consumers and producers for other labeling programs. Furthermore, allowing porches to be considered as part of an outdoor area would not substantially mitigate the estimated costs associated with the proposed rule. In comparison to the land area needed for outdoor access, porches cover a small portion, so a producer would still need to provide access to land that extends beyond the porch area.

AMS also considered allowing awnings or overhangs which extend from poultry houses to count as outdoor areas. However, the distinction between an awning versus a porch could be confusing and present enforcement challenges. Given the controversy with the use of porches, AMS intends that the regulations clearly prohibit porches or a similar structure from being used as outdoor space. *Implementation period.* AMS also considered different implementation periods of three, five and ten years for the outdoor access and outdoor stocking density requirements for poultry in this proposed rule. In determining the length of an implementation period, we considered cost mitigation and the urgency of consumer expectations. For cost mitigation, we reviewed the depreciation rate and timeframe for layer houses. The NAHMS 2013 Layers study collected the age of houses on organic operations with layers: Nearly 40 percent were nine years old or less. AMS determined that the weighted average age of aviary houses is 7.6 years by using the midpoint of each survey bracket (*i.e.*, less than 5 years; 5–9 years; 10–19 years) and the percent of operations in that bracket.[42] The OEFA survey reported that the average depreciation rate for layer houses among respondents was 12.5 years.[43] The difference between the depreciation rate (12.5 years) and average age of organic aviary layer houses (7.6 years) is roughly 5 years. Therefore, a 5-year implementation period would allow organic egg producers, on average, to recover the costs of a poultry house. At that point, structural changes necessitated by this rule would align with scheduled maintenance or new construction.

While we expect that organic egg producers will bear a greater cost burden for this proposed rule, this implementation period should also align with upgrades or new construction for broiler houses. We note that 15 percent of broiler houses generally are 5 years old or less and have a depreciation rate of 15 years.[44] While organic broiler houses are likely to be newer on average, given that the NOP was not established until 2002, we anticipate that the majority of organic broiler houses would be nearing the end of useful life when this rule is implemented.

AMS also considered a three 3-year implementation period. This timeframe would align with the 3-year period that is required to transition land to organic production if there have been applications of prohibited substances (§ 205.202(b)).[45] We believe that three years would not provide sufficient time for producers who need to expand the outdoor access areas to acquire additional land and potentially convert that land to organic production. We estimate that 45 percent of organic egg production may need additional land to meet the outdoor access requirements. This short timeframe would impose an unduly immediate cost burden and deter producers from exploring options to remain in organic egg production, potentially causing a sharp reduction in the supply of organic eggs.

Conversely, a 10-year implementation period could erode consumer demand for organic eggs if the organic label requirements do not keep pace with growing consumer preferences for more stringent outdoor living conditions. Prolonging the disparity in organic egg production practices and the resulting consumer confusion would be detrimental to the numerous organic egg producers who could readily comply with this proposed rule. They would continue to operate at a competitive disadvantage to operations which provide less outdoor access and have greater feed efficiencies and lower mortality rates.

A 5-year implementation period would make these requirements more feasible for a greater portion of organic egg producers while keeping the organic label competitive in regards to animal welfare claims. We believe the 5-year period would coincide with the timing for retrofitting poultry houses in the majority of organic operations, regardless of this rule.

AMS is requesting comment on the above assumption. Specifically, AMS requests comments on:

- The age of poultry houses used for organic egg production.

Consumer and Producer Responses as Drivers of Benefits and Costs

Connections between costs and benefits, on the one hand, and potential producer and consumer responses, on the other, are set out in the table below.

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[41] USDA APHIS reports and data can be found at the following site: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/avian-influenza-disease/!ut/p/z1/04_iUlDg4tKPAFJABpSA0fpReYllmemJJZn5eYk5-hH6kVFm8X6Gzu4GFiaGPu6uLoYGjh6Wnt4e5mYG7mam-l76UfgVFGQHKgIAz0VrTQ!!/.*

[42] AMS understands there was 39 percent increase in the number of organic layers between 2013 and 2015 (3.2 million additional organic layers), the highest increase since this information was collected starting in 2007. While we expect that additional aviary houses may have been constructed to house the increase in the number of layers, we did not factor that into the average age estimate. If new organic aviary houses began operation in 2013–2015, this would lower the average age of organic aviaries.

[43] The OEFA survey asked, "What is the depreciation rate (as reported on Federal tax Schedule F forms) of your poultry houses in years?"

[44] This reflects the percentage of broiler houses in the U.S., not specific to organic operations that were 15 years old or less in 2006. We applied that proportion to this analysis because the population of broilers has grown since that time, so houses that were older than 15 years are likely to have been upgraded or renovated in the interim. This data was reported in MacDonald, James M. *The Economic Organization of U.S. Broiler Production.* Economic Information Bulletin No. 38. Economic Research Service, U.S. Dept. of Agriculture, June 2008. The depreciation rate was reported in the Organic Egg Farmers of America Survey conducted in July 2014 and cited above.

[45] Section 205.202(b) of the USDA organic regulations requires that land from which harvested crops will be represented as organic must have had no prohibited substances, as listed in § 205.105, applied to it for a period of 3 years immediately preceding harvest of the crop. Further, organic livestock are required to have organically produced feed (§ 205.237(a)).

Consumer, producer responses	Impacts
Producers change their practices to meet the new, more stringent organic standards; consumers continue consuming organic agriculture products.	Costs: Incremental cost of producing to new, more stringent organic standards, relative to existing organic standards. Benefits: Incremental credence benefits of consuming products produced according to new, more stringent organic standards, relative to existing organic standards.*
Producers discontinue (or avoid newly achieving) organic certification; consumers switch from products meeting existing organic standards to non-organic versions of similar products.	Cost savings: Incremental savings of producing with non-organic practices, relative to existing organic standards Benefits (reduced): Incremental credence benefits of consuming products produced according to non-organic practices, relative to existing organic standards.*
Producers discontinue (or avoid newly achieving) organic certification; consumers switch to dissimilar products.	Impacts (may be positive or negative): Incremental production costs, incremental credence benefits, incremental non-credence attributes.

*The price premium that consumers are willing to pay for certified organic products correspond to benefits, as that term is used for purposes of analysis under Executive Orders 12866 and 13563, only if organic production practices yield real improvements in areas such as animal welfare, human health or environmental outcomes.

Benefits of the Proposed Rule

This proposed rule would bring specificity and clarity to the regulations relating to animal welfare practices for organic livestock and poultry and address the persistent requests to AMS for further standards on living conditions for organic livestock and poultry. Greater clarity and specificity will foster the uniform application of the practice standards in organic production, animal transport, and slaughter. This, in turn, will maintain consumer confidence driving organic purchases. Organic products cannot be distinguished from non-organic products based on appearance; consumers rely on process verification methods, such as certification to a uniform standard, to ensure that organic claims are true. For this reason, organic products have been described as "credence goods" in the economics literature.[46][47] Credence goods have properties that are difficult to detect, both before and after purchase. Organic livestock products are an example of a "credence good" for which consistent verification to a common production standard across the sector supports continued consumer confidence. Ensuring the stability of consumer confidence in the organic livestock sector can also protect the confidence in the organic label generally.

Consumers are increasingly interested in the treatment of animals raised for food, as evidenced by the proliferation of animal welfare certification labeling claims. This proposed rule would ensure that organic producers are equally competitive in this market and would alleviate the need to pursue additional certification to communicate the use of strict animal welfare practices to consumers. The existing animal welfare certification programs have varying requirements, even within individual programs, creating a range of standards in the marketplace.[48] For example, these programs may include standards for pastured, cage-free and free-range production. However, high participation rates among organic livestock and poultry producers in these third-party animal welfare certification programs indicates that the organic label does not provide the level of information consumers need to assess whether a specific brand meets their expectations for animal welfare practices. We expect that private animal welfare certification labels on organic products serve as supplementary information that provides consumers with assurance of certain product attributes, such as minimum space requirements, which are not guaranteed through organic certification. Consumers who purchase these doubly certified products would likely not be satisfied with private animal welfare certification alone because organic certification addresses other unique attributes they seek, *e.g.*, animals receive only organic feed.

Establishing clear practice standards for organic products which meet or exceed most of the private animal welfare certification requirements would foster a more efficient market for organic products. Narrowing the range of acceptable practices within organic egg production would bolster consumer confidence in the information conveyed by an organic label claim on these products. As the requirements in this proposed rule would meet or exceed most of the private animal welfare certification standards, we expect that producers would find organic certification sufficient and reduce participation in other certification programs. This would streamline the business practices of organic livestock producers by reducing redundant and duplicative paperwork and verification processes for organic certification and a separate animal welfare certification.

Several studies show a correlation between consumer preferences/demand for products associated with higher animal welfare standards and higher price premiums. We believe these studies may be applicable in predicting consumer behavior in the organic egg market, particularly for consumers who regularly purchase organic eggs. Sustained consumer demand for organic eggs could mitigate some costs associated with this rulemaking and incentivize producers to comply with this proposed rule and remain in the organic market.

A study by Heng (2015) examined whether consumers are willing to pay a premium for livestock products associated with improved animal welfare.[49] The results identified the basic living needs of hens (including providing outdoor access) as the most important factors for their welfare. The estimates also indicated that on average consumers placed a higher value on animal welfare issues than on potential environmental issues in their egg choices. In addition, the estimated Willingness to Pay (WTP) parameters suggested that consumers were willing to pay a premium in the range of $0.21

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[46] Caswell, Julie A. and Eliza M. Mojduszka. 1996. "Using Informational Labeling to Influence the Market for Quality in Food Products." American Journal of Agricultural Economics. Vol. 78, No. 5: 1248–1253.

[47] Zorn, Alexander, Christian Lippert, and Stephan Dabbert. 2009. "Economic Concepts of Organic Certification." Deliverable 5 for Project CERTCOST: Economic Analysis of Certification Systems in Organic Food and Farming. *http://www.certcost.org/Lib/CERTCOST/Deliverable/D11_D5.pdf.*

[48] The Humane Farm Animal Care program has compiled a table comparing the requirements of selected third-party animal welfare certification programs for laying hens. This includes stocking density and outdoor standards. The comparison table is available at: *http://certifiedhumane.org/how-we-work/fact-sheet/.*

[49] Yan Heng, "Three Essays on Differentiated Products and Heterogeneous Consumer Preferences: The Case of Table Eggs" (Ph.D. diss., Kansas State University, 2015).

to $0.49 per dozen. Such premiums could serve as an incentive for farmers to pursue a labeling claim that signifies improved animal welfare practices.

Another study by Heng et al., (2013) estimated the values of certain attributes of eggs, including outdoor access and stocking density.[50][51] This study included a survey to assess general perceptions of animal welfare. Respondents with favorable perceptions of pro-animal welfare products rated cage-free and outdoor access as more important factors affecting egg quality than adjusting stocking density or not inducing molting.[52] WTP parameters revealed that 89 percent of respondents in one cohort were willing to pay a premium of $0.25 per dozen for eggs from hens given outdoor access; 11% of those respondents were not willing to pay a premium for outdoor access.[53] These findings support AMS' decision to essentially keep indoor stocking rates consistent with current practices and focus on parity among organic egg producers for meaningful outdoor access. We believe that organic consumers generally have high regard for animal welfare-friendly products. Therefore, we expect that focus on parity will resonate positively with consumer preferences for definitive outdoor access practices for organic layers. Further, it will be associated with a willingness to pay a premium for more consistency and transparency in how this practice is implemented.

Sumner et al., (2011) looked at the potential market impacts of shifting egg production from caged housing to alternative noncage systems.[54] The authors note that the analysis could be extended to other alternatives such as free-range and pasture-based production. While not focusing on organic eggs, these results are illustrative of the impacts of mandated housing changes on supply and demand for eggs.[55] The research concludes that farm price increases of 40 percent for eggs would likely reduce consumption by less than 10 percent. The authors note that in the U.S., egg consumption is relatively unresponsive to price change and egg expenditures are a very small share of the consumer budget. Based on other research, the study surmised that consumers are willing to pay more for animal welfare-related attributes (*e.g.,* ample space per hen, safe outdoor access) when they have more information about the housing systems. These results support the expectation for consumer willingness to pay for eggs perceived to be produced using alternative housing. We believe that the space and outdoor access requirements in this proposed rule would enable consumers to better differentiate the animal welfare attributes of organic eggs and maintain demand for these products.

Chang et al., (2010) examined prices for eggs with various labels about production (*e.g.,* cage-free, free-range, organic) to assess how consumers value certain product attributes.[56] This study noted that price premiums for cage-free and free-range eggs are 56.7 percent and 87.5 percent higher, respectively, than conventional egg prices (the price premium for organic over conventional was 85 percent). Free-range eggs are distinguished from cage-free, for the purposes of this study, by the provision of outdoor access for the laying hens in free-range systems.[57] This data demonstrates that consumers value living conditions that reflect improved animal welfare for hens, even more so when the birds are able to go outdoors. Using predicted prices, this study further estimates what portion of the price premium can be attributed to egg color versus production practice. The study found that 58 percent and 64 percent of the price premium is attributed to production practice rather than egg color for cage-free and organic eggs, respectively. Consumers of organic eggs appear willing to pay higher premiums for production practices than consumers of other types of eggs. We believe these findings could be persuasive in an organic egg producer's decision to comply with this proposed rule in order to remain in the organic market.

In addition, informal national surveys reveal consumer expectations that organic eggs are produced from hens with outdoor access. A 2014 Consumer Reports Labeling Survey noted that 55 percent of consumers believe that the organic label on meat and poultry means that the animals went outdoors.[58] Further, the survey measured that 72 percent of consumers believe the organic label should mean that the animals went outdoors. A second survey, designed by the American Society for the Prevention of Cruelty to Animals, showed that 63 percent of respondents believe that organic livestock have access to pasture and fresh air throughout the day and 60 percent believe that organic livestock have significantly more space to move than non-organic animals.[59] This proposed rule would align consumer expectations and the production practices required to make an organic label claim regarding animal welfare for poultry.

We expect that clear, consistent requirements for avian living conditions can sustain consumer demand and support the growth in the market for organic poultry products. Several articles describe a positive association between the establishment of uniform regulation of product labels and consumer confidence. Van Loo, et al, (2011) asserts that uniform organic standards and certification procedures are essential to maintain consumer trust in the validity of organic labels and willingness to pay for such products.[60] They found that the magnitude of consumers' willingness-to-pay for organic chicken breast depended on the type of organic label: A 35 percent premium for general organic labeled chicken breast versus a 104 percent premium for a chicken breast labeled as USDA certified organic. Smith (2009), states that governmental regulatory oversight of credence-type claims, such as "organic," can facilitate the availability of improved information on food quality, deter irresponsible practices and provide a mechanism to prosecute violations.[61] Smith also observes that governmental standards can address the market failure connected to uncertainty about product quality and prevent consumer deception and fraud. The prevalent participation among organic poultry producers in private animal welfare certification programs demonstrates that the organic certification does not provide the quality assurances that consumers expect for animal welfare attributes. Adding specificity to the USDA organic regulations for poultry living conditions would fill that void and add stability to a market sector that has widely varying production characteristics.

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[50] Yan Heng, et al., (2013). Consumer Attitudes toward Farm-Animal Welfare: The Case of Laying Hens. Journal of Agricultural and Resource Economics 38(3):418–434.

[51] The study used 2 levels for outdoor access: Access or none. The study used three levels for stocking density: 67 square inches per bird (United Egg Producers standards); 138 square inches (average space needed for hens to fully stretch their wings) and 1.5 square feet (third-party animal welfare standards, *e.g.,* Certified Humane and Animal Welfare Approved).

[52] Respondents were asked whether they agreed that food products produced in an animal-friendly environment are: From healthier and happier farm animals, healthier for humans, better quality, better for the environment, and taste better.

[53] Respondents in this study were provided with additional information about potential environmental consequences of different management practices to understand how environmental concerns could influence consumers' valuation of layer management practices. The additional information suggested that cage-free and outdoor access systems could contribute to poorer air quality and use more energy to regulate temperatures. The $0.25 premium was measured among the group that had the environmental information. We believe this group is more descriptive of organic consumers generally because their purchases are driven by some awareness of production practices underlying the organic claim. The mean premium among respondents without that information was $0.16 for hens given outdoor access. Because the willingness-to-pay distributions for more outdoor access and space shifted positively with the additional information on potential environmental impacts of different housing systems, the study noted that consumer concerns for animal welfare issues surmount environmental concerns.

[54] D.A. Sumner, et al., "Economic and Market Issues on the Sustainability of Egg Production in the United States: Analysis of Alternative Production Systems" (Paper presented as part of the Poultry Science Association Emerging Issues: Social Sustainability of Egg Production Symposium, Denver, Colorado, July 11–15, 2010).

[55] Specifically, this study looks at four parameters: Price elasticity of demand; willingness to pay for price increases for eggs produced under alternative housing systems; price elasticity of supply; and, change in the marginal per unit cost of production due to shifting to an alternative housing.

[56] Chang, Jae Bong, et al., (2010). The Price of Happy Hens: A Hedonic Analysis of Retail Egg Prices. Journal of Agricultural and Resource Economics 35(3):406–423.

[57] The study notes that organic production requires that hens be given outdoor access and concludes that free-range can be synonymous with organic.

[58] Consumer Reports National Research Center, Food Labels Survey, 2014. Nationally representative phone survey of 1,004 adult U.S. residents.

[59] This phone survey was administered to 1,009 adults in October 2013.

In accordance with OMB Circular A–4, the benefits of this proposed rule are the real improvements in attributes (*e.g.*, animal welfare) for organic poultry products. Several recent consumer surveys gauge consumer understanding of the meaning of the organic label with respect to outdoor access. These surveys show that a higher proportion of respondents believe that organic poultry should have outdoor access than the percent which believe that organic poultry do have outdoor access.

To monetize the benefits, AMS is using previous research that has measured that consumers are willing to pay between $0.21 and $0.49 per dozen eggs for outdoor access.[62] AMS estimates the benefits by muliplying the low ($0.21), mid ($0.35) and high ($0.49) points of that range by the projected number (in dozens) of organic eggs produced by layers that are estimated to newly have outdoor access as a result of this rule being implemented.[63] The National Animal Health Monitoring Survey (NAHMS) reports that 36 percent of organic egg operations surveyed currently provide at least 2 square feet per bird (equivalent to 2.25 lbs/ft^2) of outdoor space and 35 percent of hens have outdoor access via a porch system or covered area; we do not know what percentage of total organic egg production this represents, so we calculate benefits using a range from 35 percent at the lower bound to 64 percent (= 100% − 36%) at the upper bound, and request comment on how to refine this aspect of the analysis.[64] AMS estimates that the annual benefits would thus range between $14.7 million to $62.6 million annually with a mean value of $34.6 million over a 13 year period.[65] [66] The estimated benefits would not begin to accrue until the rule is fully implemented beginning in year 6 (the proposed implementation period is 5 years).

Costs of Proposed Rule

AMS considered various alternatives for the stocking density and outdoor space provisions for organic egg production. AMS also considered how these producers might respond to the proposed stocking densities and outdoor access requirements and how this would impact the supply and demand for organic eggs. AMS did not quantify costs associated with some of the alternatives discussed above (*e.g.*, requiring the outdoor areas to accommodate a certain percent of the flock, whether or not porches can be considered outdoor space), but we discuss the potential impacts of different choices with respect to those options. We do not expect the mammalian health care and living conditions sections, transportation, or slaughter provisions to impose additional costs, as we expect that these sections will largely codify existing industry practices. Therefore, we do not project costs for the implementation of those provisions. However, AMS is requesting comments on any impacts of those proposed requirements to check that assertion.

Assumptions—Layers

To estimate the costs to comply with minimum indoor and outdoor space requirements for organic layers, AMS made assumptions about the current facilities and practices for organic egg production. AMS is proposing indoor stocking requirements that align with the current practices in organic egg production. Table 5 provides the proposed indoor stocking rates by housing type. AMS is aware that many organic egg producers participate in third-party animal welfare certification programs, in particular, the Certified Humane label program.[67] The proposed indoor stocking rates for layers match the standards for the Certified Humane certification program which has ample organic producer participation across various operation sizes and housing types. Therefore, we believe that most organic egg producers could comply with the proposed indoor stocking rates with minor or no changes to their current operation.

The Humane Farm Animal Care standards [68] for egg laying hens specify minimum indoor and outdoor space requirements for four types of housing systems: Pasture-based (where birds have unlimited access to pasture and low outdoor stocking density, approximately 40 ft² per bird); loose-housing systems, which include floor litter and slatted/mesh floor systems (both single-story houses) and aviaries (multi-level platforms and perches). AMS also estimated the distribution of organic production among the housing types as shown in Table 5.

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[60] Van Loo, Ellen J., Caputo, Vincenzina, Nayga Jr., Rodolfo M. (2011). Consumers' willingness to pay for organic chicken breast: Evidence from choice experiment. Food Quality and Preference, 22(2011), 603–613.

[61] Smith, G. (2009). "Interaction of Public and Private Standards in the Food Chain", OECD Food, Agriculture and Fisheries Working Papers, No. 15, OECD Publishing. Retrieved from *http://search.proquest.com/docview/189840535?accountid=26357.*

[62] Some quantity of organic egg production is diverted to processed foods. Applying the outdoor access price premium for table/shell eggs—which is captured in Table 2—to organic eggs used in processed foods introduces some uncertainty into the benefits analysis; therefore, we request comment on consumers' willingness-to-pay for outdoor access for hens laying eggs used in organic processed foods.

[63] AMS projects that the number of organic eggs produced when this rule is fully implemented will be 324,374,484 dozen. The organic egg supply projections are discussed in the costs section below.

[64] For the estimated costs, we assume that 45% of organic layers do not comply with the proposed outdoor access requirements and will newly have outdoor access under the proposed requirements. This is consistent with the estimated range of organic poultry production that would newly have access to the outdoors, which is used to calculate benefits.

[65] The 13 year period accounts for the time needed to fully depreciate layer houses. We use a 13 year timeframe to align with the methodology used to calculate the costs, below. The 13-year average includes five years of zero benefits, reflecting the five years before compliance with the new, more stringent standard is required, and eight years of positive benefits.

[66] If there were a decrease in animal welfare associated with producers switching from the baseline level (considered organic under the current standard) to the level provided under the cage-free standard, a necessary next step in the benefits calculation would be subtraction of the monetized decline in welfare. However, given AMS's understanding of management practices, the agency believes that there would be no such decline in animal welfare associated with switching label claims from organic to cage-free.

[67] The Organic Egg Farmers of America (OEFA) survey reported that 87 percent of organic egg production is also certified to private animal welfare standards. The survey results do not indicate which animal welfare certification programs organic egg producers participate in, but AMS is aware that the Certified Humane label is a common choice.

[68] Producers who meet the Humane Farm Animal Care (HFAC) standards, as verified through an application and inspection, may use the Certified Humane Raised and Handled logo. Participants are inspected and monitored by Humane Farm Animal Care. The minimum indoor and outdoor space requirements cited here are published in the 2014 HFAC Standards for Production of Egg Laying Hens. They are available at: *http://certifiedhumane.org/how-we-work/our-standards/*. Accessed July 7, 2015.

TABLE 5—U.S. ORGANIC LAYERS BY HOUSING TYPE

Housing system	Baseline minimum indoor space (ft² per bird)	Percent of U.S. organic laying flock
Pasture housing	1.0	10
Floor litter housing	1.5	10
Slatted/mesh floor housing	1.2	30
Aviary housing	1.0	50

In this analysis, the outdoor space is the key constraint that drives the costs of complying with the proposed rule; we are proposing an outdoor stocking density of a maximum of 2.25 pounds/ft² for layers. Many organic poultry producers currently provide an outdoor stocking density of 2.25 pounds/ft² for layers. For these producers the proposed maximum outdoor stocking density will not pose additional costs. AMS assumes that layer operations have the equivalent of two layer house footprints of outdoor space available for each house. We considered that the land available for outdoor access could be the areas between and alongside of the houses and extending from the ends of the houses. For this analysis, we assumed that pasture housing, floor litter housing and slatted/mesh floor housing systems collectively account for 50 percent of organic egg production and either currently comply with the outdoor space requirements or have the land available to comply with the proposed outdoor stocking rate without significant changes to the number of birds or facilities. AMS is not assuming that all of these operations currently provide outdoor access for layers at the proposed stocking density, but that they have the space available to do so. Therefore, these operations could incur costs for fencing, installing more exits, and other measures to make the area usable as outdoor space.

In addition to the above assumptions, a few producer survey results are notable. The National Animal Health Monitoring Survey (NAHMS) reports that 36 percent of organic egg operations surveyed provide at least 2 square feet per bird (equivalent to 2.25 lbs/ft²) of outdoor space and 35 percent of hens have outdoor access via a porch system or covered area. We do not know what percentage of total organic egg production this represents. The EIC survey reports that 15.5 percent of all organic layers have at least 2.0 ft² outdoors and access to soil; the OEFA survey, reports that 59 percent of organic layers reportedly have at least 2.0 ft² outdoors.

In this analysis, AMS postulates that a producer will consider two options in response to this proposed rule: (1) Comply with the proposed rule and remain in the organic egg market; or (2) transition to the cage-free egg market. Using those potential responses, AMS constructed two scenarios to project how the organic egg sector would behave and estimated the costs for each scenario. This section explains the assumptions and variables used to build our estimates.

AMS constructed enterprise budgets for representative organic egg operations by housing type (*i.e.*, pasture housing, slatted floor/mesh, floor litter housing, aviary housing).[69] For each representative operation, we identified a baseline cost structure which included estimated fixed and variable costs to determine the cost to produce one dozen eggs. We then made assumptions about how and if these values would change under the proposed rule. The fixed and variable costs are listed in Table 6.

TABLE 6—FIXED AND VARIABLE COSTS FOR ENTERPRISE BUDGET

- Fixed costs:
  - House
  - Composter
  - Equipment—total
  - Cooler
  - Generator
  - Outdoor space (Veranda, land, plus fencing and cover)
  - Organic Certification
  - Insurance (0.5% of the value of the assets)
  - Property tax (0.8% of the value of the assets)
- Variable costs:
  - Pullets
  - Feed
  - Wood Chips
  - Utilities
  - Labor
  - Process and Packaging Fee
  - Manure cleanout
  - Miscellaneous

To complete the cost estimates for complying with the proposed rule, AMS employed the following basic assumptions and values:

- Simple linear (straight line) depreciation of assets with zero salvage value.
- Annual opportunity cost of capital of 3 percent.
- Homogenous labor hired at $13.25 per hour.[70]
- Price variability for inputs, *e.g.*, feed, pullets, according to the size of the flock.[71]

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[69] This analysis mirrors the cost estimation methodology used by Vukina, et al., to prepare a cost analysis for the National Organic Program on implementing the National Organic Standards Board recommendations on stocking densities and outdoor access for organic poultry. Vukina et al., developed the baseline cost structure by interviewing organic layer and broiler producers and using existing literature. We have used most of their assumed values for fixed and variable costs in this analysis. The results of that analysis were reported in the following articles: Tomislav Vukina, et al., "Economic effects of proposed changes in living conditions for laying hens under the National Organic Program," *Journal of Applied Poultry Research* 23 (1) (March 2014): 80–93. Accessed February 5, 2016. doi:10.3382/japr.2013–00834. Also, Tomislav Vukina, et al., "Proposed changes in living conditions for broilers under the National Organic Program will have limited economic effects," *Journal of Applied Poultry Research* 23 (2) (June 2014): 233–243. Accessed February 5, 2016. doi:10.3382/japr.2013–00896.

[70] Labor costs were estimated using data obtained on hourly wages for farming, fishing, and forestry occupations published by the Bureau of Labor Statistics for states with high concentrations of organic broiler and egg production. We calculated an average hourly wage rate using wage rates from eight states—California, Iowa, Massachusetts, Michigan, New York, North Carolina, Oregon, and Pennsylvania—resulting in an average hourly wage rate of $13.25. Organic certification costs were calculated as the average of California Certified Organic Farmers (CCOF) and Iowa Organic Certification Program posted fees for each organic production sales range category.

[71] AMS used the following estimates for birds placed per cycle to calculate costs for the representative operation for each housing type: Aviaries—100,000 birds; slatted/mesh floor and floor litter—16,000 birds; pastured—15,000 or less.

- Feed costs per ton of $574 ($710 for pasture operations).
- Lay rate (eggs/hen/year) of 308 (284 for pasture operations).
- Feed conversion rate of 4.0 pounds per dozen.[72]
- Operations can purchase additional land if needed.
- Annual rental rate per acre of land of $177.[73]
- Building costs of $70 per hen.[74]

AMS assumed that the mortality rate for hens would increase to 8 percent from 5 percent if this proposed rule is finalized.[75] The increased mortality would chiefly be attributed to increased predation, disease and parasites from greater outdoor access. Many organic producers already provide outdoor access that would comply with this proposed rule and would not see changes in mortality.

The proposed changes to the avian living conditions, particularly outdoor access, reflect the input of numerous stakeholders, including producers and consumers, on production practices that would improve the overall quality of life for birds. The NOSB also recognized mortality rates as a key indicator of animal welfare and important to the economic viability of an operation. In addition, the NOSB has discussed specific practices to prevent and manage predation and disease in a production environment where outdoor access is an integral part. These include predator deterrents (electrified fencing, overhead netting), rotation of land, well-drained soil, lower stocking density, and selection of breeds that are suited to free range conditions.[76] While the tradeoff between a higher mortality rate for greater outdoor access generally reflects the preferences of the organic community, organic producers will be required to use practices to effectively minimize mortality and correct excessive and preventable loss.

The key factors that influence the enterprise budgets—and magnitude of the impacts to operations—are feed conversion rates, production volume and cost of land. Under the proposed rule, feed is the variable cost that would shift most notably. The cost of feed would increase due to lower feed conversion as birds expend more energy outdoors.[77] Lower feed conversion plus higher mortality would ultimately reduce production volume, relative to the baseline with the same number of birds.

In regards to land, AMS assumes that single-story housing systems (pasture, floor litter and slatted/mesh floor housing), have the land area to meet the outdoor stocking density for their current production. Aviary operations would require a larger land area for outdoor access than other housing types because these are multi-level structures that hold more birds than single-story poultry houses. We assume that aviaries have an indoor space roughly three times larger than the footprint of the barn. Therefore, aviary houses would on average require the equivalent of six house footprints of outdoor space to meet the minimum outdoor space requirement.[78] Therefore, AMS assumes that aviaries have the land base to accommodate 33 percent of current production at the proposed outdoor stocking rates and would need to acquire additional land. AMS calculates that an aviary operation would need an additional 3 acres of land per 100,000 birds.

In summary, the marginal cost to produce one dozen eggs would increase under the proposed rule for each type of housing system except pasture. For floor litter and slatted/mesh floor housing, AMS estimates the marginal costs to produce one dozen eggs would increase by 2.8%; for aviary systems those marginal costs would increase by 3.3%. The section below discusses how these costs to individual operations will impact the organic egg sector.

AMS is seeking comment on the accuracy of the estimates concerning the available land base for outdoor access and the other assumptions made in the cost analysis. Is the two house footprints of outdoor space per layer house a valid baseline assumption? How many aviaries, and what proportion of organic egg production, have available outdoor space to comply with the proposed outdoor stocking density?

Assumptions—Broilers

This proposed rule contains indoor and outdoor space requirements specific to broiler and other meat-type avian species. Similar to organic egg production, AMS expects that the space requirements for broilers are the provisions that would have cost implications. This proposed rule, consistent with the NOSB recommendation, would set a maximum of 5.0 lbs/ft^2 for indoor and outdoor stocking density for broilers. According to the OEFA survey, 100 percent of responding broiler operations participate in private, third-party animal welfare certification. In order to estimate the potential costs to comply with the stocking density, AMS made the following key assumptions:

- AMS expects that 75 percent of organic broiler production complies with the proposed stocking densities.[79] We assume that 25 percent of organic broiler production meets a maximum of 6.5 lbs/ft^2, for the indoor stocking density. That metric is based on third-party animal welfare certification programs which have high participation rates among organic operations.[80] For

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[72] AMS estimates increased feed costs per bird due to increased energy expenditure outdoors. We project the feed conversion rate will move from the baseline 3.8 pounds per dozen to 4.0 pounds per dozen.

[73] Prices for land were constructed based on average real estate values for farm land per acre in 2014 (National Agricultural Statistics Service [NASS], 2014). Land prices were calculated as the average of the published land prices in the top five states for organic egg production. The prices for land in New York, Massachusetts, Michigan, North Carolina, and California were averaged to obtain a land price of $5,884 per acre. The annual rental rate was obtained by multiplying the value of land with the 3 percent interest rate, resulting in an annual rate of $177 per acre.

[74] This includes poultry houses, pullet housing, processing equipment and infrastructure improvement, but does not include costs to construct a new feed mill. These costs are based on information from organic egg producers for existing housing costs.

[75] The National Animal Health Monitoring Survey Layers 2013, reports that about half of organic egg producers have a 60-week mortality of less than 4 percent. About 20 percent of organic egg producers have a 60-week mortality of 7 percent or higher. For the 10 percent of operations (pastured) which we expect already comply with the proposed requirements, AMS uses an estimated baseline mortality rate of 10 percent. We do not expect that the proposed requirements would affect that rate for these types of operations that currently provide ample outdoor access.

[76] At its September 2012 meeting, the NOSB discussed a guidance document for assessing animal welfare of poultry. This included a description of management practices that support animal welfare and a target mortality rate of 3 to 5 percent.

[77] In the enterprise budget, some of the variable costs (labor, processing and packaging fee) would decline slightly under the proposed rule.

[78] Aviaries generally have two to four levels; for this analysis we chose the midpoint—three levels. Aviaries, while more prevalent in larger scale egg operations, are also used for small and mid-size egg laying operations.

[79] The OEFA survey, representing 62 percent of organic broilers, asked organic poultry producers whether they could comply with a 2.0 ft^2/bird outdoor stocking density. According to the survey, 75 percent of organic broilers production could not meet that stocking density. However, this proposed rule would set the stocking density at 5.0 lbs/ft^2. Given that the average live weight for organic chicken is 5.84 lbs, the survey effectively asked whether broilers could comply with a 2.9 lbs/ft^2 stocking density. Since that is significantly more stringent than the proposed stocking density, we expect that the percent of organic broiler production which could comply is considerably higher. Further, in the Economic Impact Analysis of Proposed Regulations for Living Conditions of Organic Poultry, Vukina et al., concluded that the representative organic broiler operation provided a 4.275 lbs/ft^2 and could meet the 5.0 lbs/ft^2 indoor stocking density.

[80] The 6.5 lbs/ft^2 is the midpoint indoor stocking density between the Humane Farm Animal Care standards for broilers (maximum 6.0 lbs/sq^2) and

Continued

this analysis, we use 5.37 lbs/sq ft, indoors and outdoors, to represent the baseline stocking density for organic broilers generally. This is the weighted average of the range of current practices based on the assumptions described above.

- Operations which can meet the proposed indoor stocking density can also meet the outdoor stocking density. We expect that the land area around a broiler house is equivalent to the footprint of two broiler houses. Since broilers are not housed in multi-level aviaries like laying hens, the outdoor space could accommodate the same number of birds at the indoor stocking density.[81]
- The current, annual organic broiler production is roughly 16 million birds and the average live weight of organic broilers at slaughter is 5.84 pounds.[82]
- An organic broiler house will have 6 production cycles per year; each cycle is 6–8 weeks long.[83]

In addition, we applied the same assumptions for layers, specifically mortality rates, depreciation of assets, property tax, labor, insurance, etc., to the cost estimates for broilers.

Cost Estimate for Organic Egg and Poultry Production

AMS assumes that in response to this proposed rule, affected producers will make operational changes to comply with the proposed rule and continue organic egg and poultry production. The projected net returns shown in Table 7 support this projection; under the proposed rule the net returns for organic eggs will exceed the net returns of selling to the cage-free market. Table 7 shows the difference in net returns per 100,000 dozen eggs for organic eggs under the current USDA organic regulations and the proposed rule, and for cage-free eggs. The net returns vary based on housing systems, *i.e.*, aviary and single-storyhouses.

TABLE 7—COMPARISON OF NET RETURNS BY LABEL CLAIM [84]

Label claim	Net return ($)—Aviaries	Net return ($)—Single-story houses
Certified Organic—Current Baseline	26,482	21,190
Certified Organic (as proposed)—	19,779	14,109
Cage-Free	7,262	949

[a] All values in table are per 100,000 dozen eggs.

AMS assumes that producers would maintain their current level of production (*i.e.*, the same number of layers) and would seek additional land to meet the proposed outdoor stocking density. The estimated total costs for the organic egg sector are the sum of increased operating expenses and reduced production. AMS is calculating the costs over a 13-year timeframe. AMS believes that during this period, existing organic layer houses would fully depreciate. AMS understands that producers may have other assets, such as land, feedmills, equipment, which are integral to their organic operation and will not have fully depreciated during the 13-year period. We have tied the costs to the house because this investment requires the most capital.

The methodology just described reflects an assumption that costs accrue only to legacy organic producers. As example for which this assumption seems plausible, consider a producer with a fairly new house, located in a spot without open land; such a producer would likely choose to switch to cage-free eggs until the time when the house gets close to needing replacement, and then might build the new house at a location spacious enough to allow for organic production. The costs (*i.e.*, consumer and producer surplus losses of cage-free relative to organic) associated with this type of case would decrease over time. For this reason, the lower bound cost estimates presented below decline linearly over time, with estimates approaching zero by year 14. On the other hand, a cost category such as increased bird loss due to predation is an inherent aspect of conformance to the proposed higher organic standard; it will not decline to zero at any point in the future. The upper bound cost estimates presented below, for which estimates (other than the upfront land expenditure of $1.1 million) are the same from one year to the next, reflect an assumption that this type of cost is predominant.

There are no outdoor space costs for the first five years because layer operations would not be required to make any changes to the outdoor space during that time period.

As discussed above, the operating expenses for most organic egg operations will increase chiefly due to higher feed costs, because of decreased feed efficiency, and the purchase of additional land. There may be added costs for maintenance of outdoor areas (*e.g.*, fencing); however we have not quantified these costs due to wide variability in site-specific conditions. The one-time expenditure for the purchase of additional land is projected to be about $1.1 million for the organic egg sector.

The reduced volume of eggs going to the market due to higher mortality and decreased lay rate and feed conversion, all associated with more outdoor access, will also lower net returns. In Table 8, AMS estimated how the proposed rule would affect total egg production while holding the layer numbers constant for each housing type.

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the American Humane Association standards for broilers (maximum 7.0 lbs/sq^2).

[81] Vukina et al., also assumed for their analysis that the representative broiler producer is in a position to buy or lease one acre of additional land to expand outdoor access and meet the proposed stocking density.

[82] The AMS Livestock, Poultry and Grain Market News Report, Weekly USDA Certified Organic Poultry and Eggs, is available at: *http://www.ams.usda.gov/market-news/organic-market-news-reports.* AMS Market News reported that 16 million organic broiler chickens were slaughtered under Federal Inspection in 2014.

[83] A 6 week production cycle is more common.

[84] The net return estimates use the following data values/sources: (1) Wholesale value of organic eggs ($2.64/dozen) and wholesale value of cage-free eggs ($1.65/dozen). These are the values reported to AMS Market News for Free on Board organic and cage-free eggs in June 2015. (2) We assumed that 20% of the eggs would go the breaker egg market priced at $1.00/dozen. This is the price reported to AMS Market News in 2015.

TABLE 8—PROPOSED RULE IMPACT ON ORGANIC EGG PRODUCTION BY HOUSING TYPE

Housing type	Difference in total egg production after rule (percent decrease) [a]
Pasture	No change.
Floor litter	1.5
Slatted/mesh floor	1.5
Aviary	1.5

[a] AMS estimated how the proposed rule would affect total egg production while holding the layer numbers constant for each housing type.

For the organic egg sector, AMS estimates that the costs of this proposed rule will average $6 to $17 million annually. The compliance costs that would occur in year 1 if the entire industry had to comply (and each other year, for the upper bound estimates) is $28.2M. For the lower bound estimates, in each year, compliance costs decline by 1/13 until they reach zero in 2014. No costs are incurred during the first 5 years due to the 5 year implementation period for outdoor space requirements. By year six, 5/13ths of the layer barns will have been fully depreciated based on federal tax returns. Thus, the lower bound compliance costs incurred are reduced by 5/13ths ($10.8 million) to exclude all compliance costs from the barns which are fully depreciated prior to implementation of the outdoor space requirements. Lower bound costs reported are reduced by 1/13th each additional year until costs reported would reach $0 in year 14.

For this analysis, AMS assumes that organic broiler producers would also maintain their current facilities and reduce the number of birds, if needed, in order to comply with the proposed stocking densities and remain in the organic market. In this scenario, producers would incur some increased expenditures, linked to increased feed costs and reduced feed efficiency, and reduced production. In addition, AMS estimates that the organic broiler flock (16 million birds) would be reduced by 7 percent, or 1.18 million birds to comply with the proposed indoor stocking density. Estimated costs to producers in each of the years after compliance with the rule is required will exceed the projected annual average. For the lower bound, AMS is reducing the actual costs (*e.g.*, lost revenue) from lower production by 1/13th each year throughout the 13-year period.[85] In summary, the total costs AMS is reporting for organic broiler production is estimated to average between $3.4 and $6.8 million annually.

The compliance cost would be in the first year (year 1) if the entire industry had to comply. For the lower bound, costs are reduced by 1/13 of that cost every year until they reach zero in year 14. No costs are incurred during the first year due to the 1 year implementation period for indoor access requirements. By the 2nd year, costs reported are reduced by 1/13th ($563,000) to $6.8 million because 1/13th of the barns will have fully depreciated. Costs reported are reduced by 1/13th each additional year until costs reported would reach $0 in year 14.

In summary, the total reported costs for the organic egg and poultry sector are estimated to average $9.5 to $24.1 million annually. AMS estimates that the increased operating costs and lost revenue from decreased production volumes would result in a 3.63 percent increase in the break-even price for one dozen organic eggs ($2.31 to $2.39 per dozen). AMS expects that some organic egg and broiler producers may face additional costs for building new fences, providing shade in outdoor areas, or creating more doors in poultry houses. We have not quantified these costs due to the wide variability in baseline conditions and potential changes based on the suitability to site-specific conditions.

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[85] It is not standard practice to categorize lost revenue as a cost in a society-wide cost-benefit analysis. Instead, costs should be calculated as lost producer and consumer surplus (that is, the difference between the amount consumers would be willing to pay for the relevant consumption units and the marginal cost of producing those units, summed across the units that are no longer traded in the market). We request comment that would allow for revision of the analysis along these lines.

Table 9. Estimated costs for organic egg and poultry sector – full compliance.

Year	Broilers	Layers	Total
1	$7,324,000[a]	$28,160,000	$0
2	$6,760,000 to $7,324,000	$25,994,000 to $28,160,000	$6,760,000 to $7,324,000
3	$6,197,000 to $7,324,000	$23,828,000 to $28,160,000	$6,197,000 to $7,324,000
4	$5,633,000 to $7,324,000	$21,662,000 to $28,160,000	$5,634,000 to $7,324,000
5	$5,070,000 to $7,324,000	$19,495,000 to $28,160,000	$5,070,000 to $7,324,000
6	$4,507,000 to $7,324,000	$17,329,000 to $28,160,000	$21,836,000 to $35,484,000
7	$3,944,000 to $7,324,000	$15,163,000 to $28,160,000	$19,107,000 to $35,484,000
8	$3,380,000 to $7,324,000	$12,997,000 to $28,160,000	$16,377,000 to $35,484,000
9	$2,817,000 to $7,324,000	$10,831,000 to $28,160,000	$13,648,000 to $35,484,000
10	$2,253,000 to $7,324,000	$8,664,000 to $28,160,000	$10,918,000 to $35,484,000
11	$1,690,000 to $7,324,000	$6,498,000 to $28,160,000	$8,189,000 to $35,484,000
12	$1,127,000 to $7,324,000	$4,332,000 to $28,160,000	$5,459,000 to $35,484,000
13	$563,000 to $7,324,000	$2,166,000 to $28,160,000	$2,730,000 to $35,484,000
13 year average	**$3,380,000** to **$6,761,000**	**$6,086,000**[b] to **$17,329,000**	**$9,466,000** to **$24,090,000**
TOTAL	**$43,943,000** to **$87,888,000**	**$79,115,000** to **$225,280,000**	**$123,059,000** to **$313,168,000**

[a] The amounts in the shaded areas were not included in the totals because producers would not need to comply with the rule during these years. They are provided here to show how the costs were calculated. The values listed in year 1 are the full compliance costs for broilers in year 2 (when the rule becomes effective) and layers in year 6 (after the implementation period). For the lower bound estimates, these amounts were reduced by 1/13th each year.

[b] This includes a one-time land cost of $1.1 million which was not depreciated.

Impact of Egg Operations Leaving Organic Production

Alternatively, some organic egg operations may consider leaving organic production for the cage-free market. AMS estimates that up to 90 percent of organic aviaries may transition to cage-free egg production due to marketing opportunities and challenges of complying with the outdoor space requirements.[86] Our assumptions about land availability, described above, and the projected net returns for organic eggs and cage-free eggs informed our prediction of how organic producers may respond. We expect that 90 percent may overestimate that proportion of egg production that might exit the organic market and seek data to refine this estimate.[87] The estimated 90 percent of organic aviaries that do not have the land available would need to reduce the number of birds to meet the proposed stocking density. That reduced production volume would result in significant net loss and would not be economically viable. Therefore, we project that this production, which accounts for 45 percent of organic egg production, would likely transition to the cage-free egg market. As shown in Table 7, these producers would be able to sell their eggs as cage-free which has a lower cost of production but also lower premiums compared to the organic egg market.

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[86] AMS based this assumption on a review of Organic System Plans for organic egg operations which have more than one level of living space and at least 16,000 hens. We set this criteria to capture aviaries. We reviewed 62 OSPs to visually gauge whether the land area adjacent to the houses could be sufficient to comply with the proposed outdoor stocking density.

[87] For clarification, "exit" is used in this analysis to indicate that producers would leave the organic

For this analysis, we estimate the foregone profit as the difference in net returns for cage-free and organic eggs for a 13 year period. This accounts for the time needed to fully depreciate layer houses. Reported profit effects are decreased by 1/13th each year. We estimate that in aggregate producers who cannot comply with the reduced outdoor space requirements and move to cage free production would have reduced net revenues of $27 million in the first year that the rule is fully implemented. However, by year six, 5/13th of these aviary layer barns would have been fully depreciated, so none of these costs incurred are included in this proposed rule. In year six, 5/13ths of actual costs are removed leaving a reported cost of $16.6 million. Each subsequent year, an additional 1/13th of the actual costs are removed until reported profit effects reach $0 in year 14. We estimate that the foregone profit from the transition to the cage-free egg market would total $216 million of which AMS is reporting in this analysis $74.1 million, averaging $5.7 million over 13 years.[88]

These profit effects encompass real costs and cost savings, such as the savings resulting from a switch from organic feed to less expensive conventional feed; however, the highest-magnitude aspect of the profit effect is very likely the non-collection of the differential price premiums for organic eggs relative to cage-free eggs. As discussed previously, consumers pay this premium largely because they place a value on laying hens having access to the outdoors. However, the exiting producers have not been giving their animals sufficient access to the outdoors, so the non-payment of these price premiums does not correspond to changes in costs (*e.g.,* the costs of providing outdoor access) or benefits (*e.g.,* the value of animal welfare) because the outdoor access availability is the same with the cage-free production option as it is in the baseline. As such, in the context of a society-wide cost-benefit analysis, the price payment effect associated with a switch to cage-free label claims—and, by extension, most of the overall net profit effect—would be categorized as a transfer of value from egg producers to egg consumers.

To complete the estimate for this exit scenario we assume that organic egg producers, including the 10 percent of organic aviaries that do not exit to the cage-free market, have the land base to meet the proposed outdoor access requirement and will maintain organic egg production. As described in the above scenario, these producers will incur increased expenses for higher feed costs due to decreased feed efficiency and maintenance of outdoor access areas (*e.g.,* fencing). In addition, we expect that aviaries will need additional land to comply with the outdoor stocking density and will face increased annual rent for land. These organic producers would also experience reduced profits resulting from decreased lay rate and higher mortality with increased outdoor access.

Estimated costs of complying with the proposed rule, for those producers who do not transition to cage-free, will average $6.3 to $21.5 million annually for 13 years. Transfers associated with the switch to cage-free (by some, but not all, producers) average $5.7 million over that time horizon. Table 10 shows how these estimated costs and transfers are distributed over 13 years. Note that the upper bound costs in the laying hens column increase over time, as producers who temporarily exited organic production in favor of cage-free expand their production space so as to allow them to satisfy the proposed higher organic standard and they thus incur higher costs (*e.g.,* due to greater predation).

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market but would continue to produce eggs or poultry for the conventional market.

[88] Total costs incurred for the egg producers who move to the cage-free market are $216 million ($26,966,000 per year over 8 years).

Table 10. Estimated cost and transfers (foregone profit) for organic egg and poultry production – most aviaries exit.

Year	Cost: Broilers	Cost: Layers (stay in organic production)	Transfers: Layers (exiting the organic market) - reduced returns	Cost: Total
1	$7,324,000[a]	$13,770,000	$26,966,000[a]	$0
2	$6,760,000 to $7,324,000	$12,711,000 to $14,969,000	$24,892,000	$6,760,000 to $7,324,000
3	$6,197,000 to $7,324,000	$11,652,000 to $16,168,000	$22,817,000	$6,197,000 to $7,324,000
4	$5,634,000 to $7,324,000	$10,592,000 to $17,367,000	$20,743,000	$5,634,000 to $7,324,000
5	$5,070,000 to $7,324,000	$9,533,000 to $18,566,000	$18,669,000	$5,070,000 to $7,324,000
6	$4,507,000 to $7,324,000	$8,474,000 to $19,765,000	$16,594,000	$12,981,000 to $27,089,000
7	$3,944,000 to $7,324,000	$7,415,000 to $20,965,000	$14,520,000	$11,359,000 to $28,289,000
8	$3,380,000 to $7,324,000	$6,355,000 to $22,164,000	$12,446,000	$9,735,000 to $29,488,000
9	$2,817,000 to $7,324,000	$5,296,000 to $23,363,000	$10,371,000	$8,113,000 to $30,687,000
10	$2,253,000 to $7,324,000	$4,237,000 to $24,562,000	$8,297,000	$6,490,000 to $31,886,000
11	$1,690,000 to $7,324,000	$3,178,000 to $25,761,000	$6,222,000	$4,868,000 to $33,085,000
12	$1,127,000 to $7,324,000	$2,118,000 to $26,960,000	$4,149,000	$3,245,000 to $34,284,000
13	$563,000 to $7,324,000	$1,059,000 to $28,160,000	$2,074,000	$1,622,000 to $35,484,000
13 year average	**$3,380,000** to **$6,761,000**	**$2,933,000** to **$14,746,000**	**$5,744,000**	**$6,313,000** to **$21,507,000**
TOTAL	$43,943,000 to $87,888,000	$38,133,000 to $191,700,000	$74,675,000	**$82,076,000** to **$279,588,000**

[a] The amounts in the shaded areas were not included in the totals because producers would not need to comply with the rule during these years. They are provided here to show how the costs were calculated. The values listed in year 1 are the full compliance costs for broilers in year 2 (when the rule becomes effective) and layers in year 6 (after the implementation period). These amounts were reduced by 1/13th each year.

Impact on Organic Egg Supply

AMS has also considered the impact of the proposed rule on the organic egg supply if 90 percent of organic aviaries exit the organic egg market. We are using the number of layers as an indicator of organic egg supply. The number of organic layers grew 12.3 percent annually from 2007–2015.[89] We expect that this growth rate will not be sustained and project that the number of organic layers will grow 2 percent annually after year 2015. The 2 percent annual growth is estimated based on the historical growth rate in the number of nonorganic layers between 2007 to 2015.[90] Figure 1 shows the projected growth trajectory for each producer response scenario.

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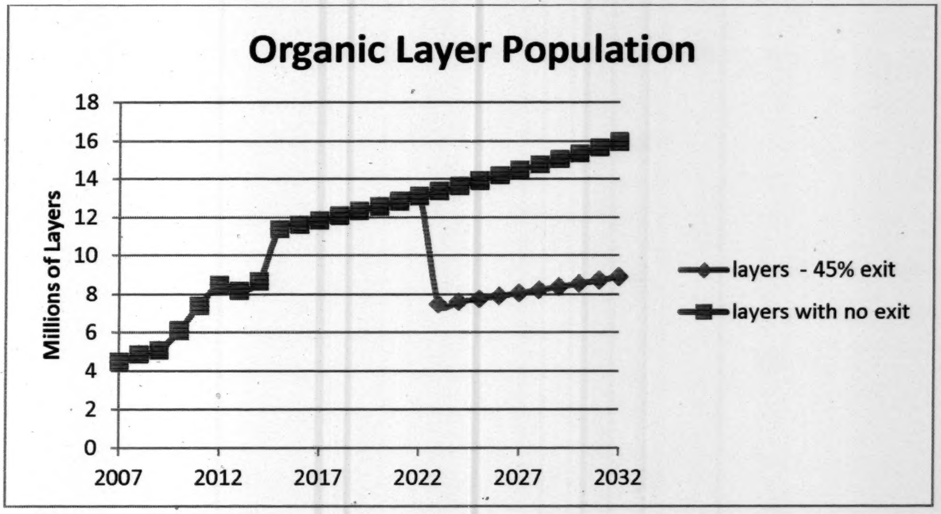
[89] USDA Livestock, Poultry and Grain Market News, 2015. This is the compound annual growth rate from 2007 to 2015. The growth from one-year to the next could have been higher or lower than the 12.3 percent average.

Figure 1. Actual and projected growth in the organic layer population.



We estimate that up to 90 percent of organic aviaries could exit to the cage-free market. In this case, we expect that the number of layers would drop by 43 percent relative to peak production. Peak production would occur 5 years after publication of the final rule and the drop in production would occur 6 years after publication when the rule must be fully implemented. After the projected decline, AMS expects that the organic layer population would resume growth at the 2 percent annual rate. This is likely a conservative estimate as unmet consumer demand for organic eggs would be an incentive for operations to enter organic egg production and for existing organic operations to expand. Assuming that all organic producers comply with this proposed rule and maintain organic production, we expect that the number of organic layers will grow 2 percent annually throughout and after the implementation period.

AMS is proposing that the final rule, except for the avian outdoor access provisions, be implemented one year after publication. The avian outdoor access provisions would be implemented in two phases: (1) Operations/facilities/poultry houses which are initially certified 3 years after publication would need to comply with the outdoor stocking density to obtain certification; (2) All operations certified before the 3-year mark would need to comply with the proposed outdoor stocking density 5 years after the publication of the final rule.

The increased operating expenses are projected to raise the break-even price per dozen eggs by 3.2 percent to 3.6 percent for floor housing systems and aviaries respectively. We use break-even price as a proxy for wholesale price. Based on studies, cited above, evaluating consumers' willingness-to-pay for outdoor access, we anticipate that price increases of this magnitude would not deter consumer purchases of organic eggs.

AMS acknowledges that achieving consistent organic practices is critical to maintain consumer trust in the organic sector and may necessitate that some producers leave the organic market and use alternate labeling claims. However, we expect that updating the organic livestock standards in response to consumer and producer preferences will avert widespread, adverse impacts from maintaining the status quo. Persistent consumer confusion about organic labels on eggs and other livestock products jeopardizes consumer trust in the organic label generally and undermines a key purpose for establishing a national organic certification program. In addition to constraining the performance of existing organic operations, these conditions could discourage participation in the NOP as producers seek alternate certification to better convey their management practices to consumers.

On the other hand, organic livestock production standards that are relevant and responsive to consumer preferences should drive demand for organic products and attract new entrants to the organic livestock market. This would have positive monetary impacts for organic livestock producers and other organic operations that produce/handle animal feed. We have not quantified the potential broader implications for not pursuing this action.

Impacts on Other Entities

AMS expects that the proposed handling requirements for organic livestock, including transit and slaughter, are common industry practice and would not substantially affect producers or handlers. During the development and deliberation of the NOSB's animal welfare recommendations in 2009 and 2011, there were numerous public comments. Those comments did not inform of any substantial impacts of provisions pertaining to mammalian livestock.

USDA's Animal and Plant Health Inspection Service (APHIS) already has requirements to support animal health during transit. With regard to slaughter, USDA's Food Safety and Inspection Service (FSIS) already requires that mammalian slaughter facilities meet similar requirements as those recommended by the NOSB, per the Humane Methods of Slaughter Act within the Federal Meat Inspection Act.

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[90] Ibid.

Some small mammalian slaughter facilities may not currently be inspected by FSIS; for example, those operations that sell meat intra-state only. However, AMS understands that humane slaughter practices in compliance with the Humane Methods of Slaughter Act are industry standard. AMS expects that costs incurred to comply with the proposed rule would not be a substantial barrier. Such costs could include those related to training staff, developing record-keeping materials, making minor facility renovations, and documenting and analyzing the facility's compliance with the proposed rule. Therefore, AMS does not expect that existing organic slaughter facilities would incur substantial costs or make onerous changes to current facilities or procedures in order to comply with the proposed rule.

AMS understands that it is possible that a subset of the existing certified organic slaughter facilities could surrender their organic certification as a result of this action, which could impact organic livestock producers. However, AMS cannot predict the number of such entities, if any, that would surrender organic certification and the corresponding impact to organic producers. Similarly, certain businesses currently providing livestock transport services for certified organic producers or slaughter facilities may be unwilling to meet and/or document compliance with the proposed livestock transit requirements. AMS is requesting comments specifically on the proposed regulations for slaughter.

As discussed below in the Paperwork Reduction Act section, this proposed rule would impose additional paperwork requirements. Organic livestock and poultry producers and handlers must develop and maintain an organic system plan. This is a requirement for all organic operations, and the USDA organic regulations describe what information must be included in an organic system plan (§ 205.201). This proposed rule describes the additional information (§§ 205.238, 205.239, 205.241, and 205.242) that will need to be included in a livestock operation's organic system plan in order to assess compliance. AMS estimates the annual cost to compile this information will be $400 per organic livestock producer. AMS expects that as producers adapt to the requirements introduced by the amendments at §§ 205.238, 205.239, 205.241, and 205.242, the number of labor hours per year for currently certified operators will decrease.

This proposed rule would also impose a minor burden on certifying agents. These entities will need to become familiar with the requirements of the proposed rule and update organic system plan forms.

AMS does not expect that this proposed rule would impose any unique cost burdens on foreign-based livestock operations that are USDA certified organic due to the extremely limited number of foreign certified poultry operations. There are less than 5 producers and handlers of USDA certified egg or chicken operations outside of the U.S. according to the NOP's Organic Integrity database. There are less than 70 USDA certified organic operations that have mammalian livestock and operation outside of the U.S.; most of these are cattle operations in Australia.

AMS did not estimate costs for impacts to third-party animal welfare certification programs. As discussed above, we expect that organic producers may opt to no longer participate in these certification programs once this proposed rule is finalized. AMS believes that these private certification programs have a participant base that is broader than organic producers and offer a unique service for producers who want to convey specific information about animal welfare practices to consumers.

Conclusions

This proposed rule will maintain consumer trust in the value and significance of the USDA organic seal, particularly on organic livestock products. Clear and consistent standards for organic livestock practices, especially maximum stocking density and outdoor access for poultry, are needed and broadly anticipated by most livestock producers, consumers, trade groups, certifying agents, and OIG. This action completes the process, as intended by OFPA and reiterated in the USDA organic regulations, to build more detailed standards for organic livestock. By resolving the ambiguity about outdoor access for poultry, this action furthers an objective of OFPA: Consumer assurance that organically produced products meet a consistent standard. In turn, it also provides assurance to producers that organic certification standards reflect the expectations of the consumer base. Augmenting the animal welfare practice standards for organic livestock would provide a foundation for efficient and equitable compliance and enforcement and facilitate fair competition among organic livestock producers. AMS is providing a 5-year implementation period for the outdoor access provisions for poultry in consideration of the average time needed to finish depreciating the capital costs of aviary houses, production realities and cost to producers who invested in organic production facilities.

AMS is seeking comments on the economic impacts, both costs and benefits, of this action on the industry. We are specifically interested in validating the accuracy of assumptions about available outdoor space, and more precise estimates of the number and size of egg layer and broiler operations that may be affected by this action. The costs and benefits are summarized in the Executive Summary and were described in detail in this section.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under sections 6503 and 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 6519(f) of the OFPA, this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–

471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136(y)).

Section 6520 of the OFPA provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

The RFA permits agencies to prepare the initial RFA in conjunction with other analyses required by law, such as the Regulatory Impact Analysis (RIA). AMS notes that several requirements to complete the RFA overlap with the RIA. For example, the RFA requires a description of the reasons why action by the agency is being considered and an analysis of the proposed rule's costs to small entities. The RIA describes the need for this proposed rule, the alternatives considered and the potential costs and benefits of this proposed rule. In order to avoid duplication, we combine some analyses as allowed in section 605(b) of the RFA. The RIA explains that the scope of that analysis is the impact on the organic egg sector. AMS believes that other types of organic livestock and poultry production would not face significant costs to comply with this proposed rule because the proposed provisions generally codify current practices. As explained below, AMS expects that the vast majority of organic egg producers and broiler producers that could be impacted by this proposed rule would qualify as small businesses. In the RIA, the discussion of alternatives and the potential costs and benefits pertain to impacts upon all entities, including small entities. Therefore, the scope of those analyses is applicable to the RFA. The RIA should be referred to for more detail.

Why is AMS proposing this rule?

The Organic Food Production Act (OFPA) provides general requirements for organic livestock production, and directs USDA to provide more detailed provisions through rulemaking. The current USDA organic regulations have broad and general requirements for ensuring the welfare of certified organic livestock and poultry. Organic livestock and poultry must be raised in a way that accommodates their health and natural behavior and reduces stress. Specifically, organic livestock and poultry producers must provide access to the outdoors, shade, clean and dry bedding, shelter, space for exercise, fresh air, clean drinking water, and direct sunlight (§ 205.239(a)). Additionally, the organic regulations describe allowed and prohibited livestock healthcare practices and specify requirements for organic livestock living conditions (§ 205.239(b)). AMS began the process of adding more specificity to the livestock provisions with the publication of the 2010 final rule on access to pasture for ruminants. This action would fulfill the expectations set forth in OFPA and anticipated by the organic community for more clarity on production practices for poultry and other livestock species.

The USDA organic regulations for livestock and poultry are general and can apply to various production situations. However, as described above, varying interpretations of these regulations have resulted in different practices, particularly concerning outdoor access for poultry. One of the main disparities in practice is the use of porches to provide outdoor access versus an uncovered area with soil and/or vegetation. This disparity in outdoor access has economic implications for the operations and jeopardizes consumer confidence in the organic label.

AMS has received formal complaints from organic poultry farmers who provide outdoor access through pasture-based systems. These operations have cited that they are at a competitive disadvantage compared to operations that are providing more limited access to the outdoors.[91] To resolve this divergence in practices, the NOSB, organic trade groups, and consumer groups have pressed AMS to intervene and set clear guidelines regarding outdoor access, minimum space requirements, and other livestock and poultry provisions. With this proposed rule, AMS is proposing more specific requirements for organic livestock and poultry, including specific minimum indoor and outdoor space requirements for organic poultry, and provisions for handling during transportation and slaughter. These proposed requirements are largely based on recommendations from the NOSB which were developed with substantive input from stakeholders, including producers and consumers. In the RIA, AMS explains that the outdoor access requirements for poultry are expected to have cost impacts for organic egg and broiler producers. Therefore, this analysis focuses on those production sectors. The other proposed requirements for mammalian living conditions, healthcare practices and handling during transport and slaughter would essentially codify existing practices and are not considered in this analysis. The scope of the analysis is also explained in the RIA.

Consumers have become increasingly interested in how their food is produced and make purchasing decisions based on the method of production. Based on public comments received in response to the NOSB's recommendations on animal welfare, AMS understands that consumers expect, and are willing to pay more for, animal welfare requirements that are more stringent than conventional products. This includes outdoor access for organic poultry. AMS believes that the costs incurred by producers in complying with this proposed action are necessary to reflect consumer expectations for organic products. If implemented, this action would, as discussed in the benefits portion of the RIA, support consumer expectations related to practices for organic livestock. AMS believes that the long-term economic impact of not implementing this proposed rule could undermine the integrity of the USDA organic seal, if there is ambiguity regarding how the USDA organic regulations must be applied across the organic livestock and poultry sector.

Would I be affected by the rule?

AMS has considered the economic impact of this proposed action on small entities. Small entities include avian and mammalian livestock producers and slaughter facilities that currently hold or are considering certification to the USDA organic regulations, as well as organic certifying agents. While the proposed action would affect all operations involved in the production, handling, and certification of organic livestock, AMS believes that the cost of implementing the proposed rule will fall primarily on current and prospective organic egg and broiler producers, including: (1) Individuals or business entities that are considering starting a new egg or poultry operation and that plan to seek organic certification for that operation, (2) existing egg and broiler producers that plan to seek organic certification for that operation, and (3) existing egg and broiler producers that are currently certified organic under the USDA organic regulations.

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[91] Increased outdoor access is associated with increased mortality due to predation and decreased feed efficiency.

The RFA requires, with some exception, that AMS define small businesses according to its size standards. The Small Business Administration (SBA) sets size standards for defining small businesses by number of employees or amount of revenues for specific industries. These size standards vary by North American Industry Classification System (NAICS) code (13 CFR part 121.201). For the RFA analysis, AMS focused on estimating how different size organic layer and broiler operations (small versus large) would be impacted as a result of meeting the proposed indoor and outdoor space requirements.

AMS does not expect that the proposed rule would substantially affect other stakeholders, including (1) operations that produce other organic poultry, (2) operations that produce mammalian livestock, (3) operations that handle organic livestock, and (4) organic certifying agents. These determinations are based on a number of assumptions described below and explained in the RIA. This analysis focused on the impact of the proposed rule on small businesses in the United States.

What are the estimated costs for organic layer operations?

Small egg producers are listed under NAICS code 112310 (Chicken Egg Production) as grossing less than $15,000,000 per year. AMS estimates that out of 722 operations reporting sales of organic eggs, 4 exceed that threshold.[92] However, we estimate that large producers account for 25 percent of organic egg production.

The availability of adjacent land for egg laying operations to meet the proposed outdoor access requirements is the main determinant of costs to implement this rule. AMS projects that organic egg and broiler producers would be able to meet this proposed rule with only modest costs. We assume that these producers have or can acquire adequate outdoor space to meet the proposed outdoor stocking density. For these producers, the increased costs are due primarily to increased mortality, reduced feed efficiency associated with increased outdoor access, maintenance of outdoor areas (*e.g.*, fencing) and for broilers, reduced number of birds to meet the indoor stocking density.[93] The reported cost estimates for this scenario are provided in the RIA in Table 9. We project the reported costs would total $4.5 million for small layer operations and $1.5 million for large layer operations. Per operation, we estimate the total annual cost would be slightly over $6,000 for small operations and $380,000 for large operations.[94]

TABLE 11—ESTIMATED COSTS FOR ORGANIC LAYER OPERATIONS BASED ON SIZE

	Small operations (less than $15 million in sales)	Large operations ($15 million or more in sales)
Reported costs annualized over 13 years (million)	$4.56	$1.52
Average, 13 year annualized reported cost per operation	6,350	380,000

AMS recognizes that the reported costs exclude the majority of compliance costs current organic layer operations will face. For organic layers operations, the compliance costs incurred will be $21.12 million each year after implementation for small operations and $7 million each year after implementation for large operations. Each small layer operation will incur compliance costs of $29,400 each year after implementation and each large layer operation will incur compliance costs of $1.76 million each year after implementation.

AMS expects that the costs to comply with the proposed outdoor space requirements would be more burdensome for larger organic layer producers and would increase the likelihood for these operations to transition to a cage-free label. Since nearly all of the organic producers qualify as small businesses, we expect that there is considerable variation in the size of operations in this category. These operations would require significantly more land and would be less likely to have that area available for expansion.

As previously stated, however, producers could choose to surrender their organic certification and move to alternate labels such as cage-free, which would reduce both their annual profits and their annual operating costs. AMS estimated the cost for the potential scenario in which 90 percent of organic aviary operations transition to the cage-free market in response to this proposed rule. Because aviary houses hold more birds, these operations will require a larger land base to comply with the outdoor stocking density. Therefore, we expect that any operations would which exit the organic egg market would not qualify as small businesses per SBA criteria. AMS estimates that if a 100,000-dozen-egg, aviary facility transitioned from the current USDA organic regulations to the cage-free label, the operation would, on average, have reduced annual profits ($7,262 versus $26,482).

Organic Broiler Producers

Small chicken producers are listed under NAICS code 11230 (Broilers and Other Meat Type Chicken Production) as grossing less than $750,000 per year. According to the NASS special tabulation, AMS estimates that 27 of the 245 operations reporting sales of organic broilers would not qualify as small businesses. AMS estimates that the large businesses represent 25 percent of the organic broiler market. AMS reports that the proposed indoor and outdoor space requirements would impose average costs of $3.4 million per year.

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[92] The National Agricultural Statistics Service's 2014 Organic Survey provides the number of farms reporting sales of organic eggs and those reporting sales of organic broilers. AMS requested a special tabulation from NASS to obtain the number of organic egg and organic broiler operations which exceed the Small Business Administration sales criterion for small businesses in each of these production categories.

[93] Due to increased mortality, producers may need to have more birds to offset the losses. In addition, birds may expend more energy with increased outdoor access requiring more feed per bird.

[94] The per operation totals are calculated using 722 as the total number of organic layer operations; 718 qualify as small and 4 qualify as large per the SBA size standards.

TABLE 12—ESTIMATED COSTS FOR ORGANIC BROILER OPERATIONS BASED ON SIZE

	Small operations (less than $750,000 in annual sales)[a]	Large operations (over $750,000 in annual sales)
Reported costs annualized over 13 years	$2.53 million	$845,000
Average, 13 year annualized, reported cost per operation	11,600	31,300

AMS recognizes that the reported costs exclude the majority of compliance costs current organic broiler operations will face. For organic broiler operations, the compliance costs incurred will be $5.5 million each year after implementation for small operations and $1.8 million each year after implementation for large operations. Each small layer operation will incur compliance costs of $25,200 each year after implementation and each large layer operation will incur compliance costs of $68,000 each year after implementation.[95]

Would other organic livestock producers and handlers be substantially affected?

Based on available data, AMS does not expect that other organic livestock producers and handlers would be substantially affected by this proposed action. As explained in the RIA, we expect the proposed provisions for mammalian living conditions and health care practices, and handling and transport to slaughter, would codify existing industry practices. These determinations are based on a series of assumptions described below.

Organic Mammalian Livestock Producers

AMS believes the proposed clarifications for organic mammalian livestock, including provisions related to animal treatment and physical alternations, are common industry practice and would not have a substantial impact on such producers. AMS previously addressed major living condition changes for ruminant livestock in its final rule, Access to Pasture (Livestock) (75 FR 7154, February 17, 2010).

Organic Livestock Handling Operations

Based on available information, AMS understands that, in practice, all handling operations for organic livestock are small businesses. We expect that the proposed handling requirements for organic livestock, including transit and slaughter, are common industry practice and would not substantially affect handlers. USDA's Animal and Plant Health Inspection Service (APHIS) already has requirements to support animal welfare during transit. AMS understands that the proposed additional requirements related to transit are of industry standard. Also, operations providing transit services for organic livestock are not required to be certified to the USDA organic standard. Therefore, while operations providing transit services would need to comply with the proposed transit requirements, they would not be directly subject to additional certification requirements.

Both small livestock slaughter facilities (NAICS code 311611) and poultry slaughter facilities (NAICS code 311615) are defined as those grossing less than $500,000,000 per year. AMS understands that most of the approximately 114 U.S.-based livestock slaughter facilities certified to the USDA organic regulations are small businesses. With regard to slaughter, USDA's Food Safety and Inspection Service (FSIS) already requires that mammalian slaughter facilities meet similar requirements as those recommended by the NOSB, per the Humane Methods of Slaughter Act within the Federal Meat Inspection Act. Some small mammalian slaughter facilities may not currently be inspected by FSIS; for example, those operations that sell meat intra-state only. However, AMS understands that humane slaughter practices in compliance with the Humane Methods of Slaughter Act are industry standard. In addition, some small poultry slaughter facilities which are exempt from FSIS inspection already observe the good commercial practices that would align with the Poultry Products Inspection Act and FSIS regulations. AMS expects that costs incurred to comply with the proposed rule would not be a substantial barrier. Such costs could include those related to training staff, developing record-keeping materials, making minor facility renovations, and documenting and analyzing the facility's compliance with the proposed rule. Therefore, AMS does not expect that existing organic slaughter facilities would incur substantial costs or make onerous changes to current facilities or procedures in order to comply with the proposed rule.

AMS understands that it is possible that a subset of the existing certified organic slaughter facilities could surrender their organic certification as a result of this action, which could impact organic livestock producers. However, AMS cannot predict the number of such entities, if any, that would surrender organic certification and the corresponding impact to organic producers. Similarly, certain businesses currently providing livestock transport services for certified organic producers or slaughter facilities may be unwilling to meet and/or document compliance with the proposed livestock transit requirements.

What is the impact for organic certifying agents?

This proposed rule would also affect certifying agents that certify organic livestock operations. The Small Business Administration (SBA) defines small agricultural service firms, which includes certifying agents, as those having annual receipts of less than $7,500,000 (North American Industry Classification System Subsector 115—Support Activities for Agriculture and Forestry). There are currently 79 USDA-accredited certifying agents; based on a query of the NOP certified organic operations database, there are approximately 41 certifying agents who are currently involved in the certification of organic livestock operations. AMS believes that these certifying agents would meet the criterion for a small business, though some are agencies of state governments. While certifying agents are small entities that will be affected by this proposed rule, we do not expect these certifying agents to incur substantial costs as a result of this action. Certifying agents must already comply with the current regulations, *e.g.*, maintaining certification records for their clients. Their primary new responsibility under this proposal would be to determine if organic livestock producers are meeting the requirements proposed in this rule, including but not limited to the minimum indoor and outdoor space requirements for organic poultry.

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[95] The per operation totals are calculated using 245 as the total number of organic layer operations; 218 qualify as small and 27 qualify as large per the SBA size standards.

How would the proposed implementation period affect small businesses?

Minimum Outdoor Space Requirements

AMS understands that, based on the analysis above, both small and large organic layer operations and broiler operations may incur costs in order to comply with the proposed minimum indoor and outdoor space requirements. While our analysis demonstrates that large poultry operations would have significantly higher compliance costs than small operations on average, we understand that small producers that are closer to the 245,000-hen threshold or the 150,000 broiler threshold may still incur substantial costs to comply with the proposed rule. Therefore, AMS is seeking to reduce the economic burden to organic producers, including small businesses, without unduly delaying the improved animal conditions.

AMS is proposing a 5-year implementation period for the minimum outdoor space requirements for poultry. A facility which is certified before 3 years after publication of the final rule would have 5 years to come into compliance. Producers and poultry houses which are not certified prior to 3 years after publication of the final rule would need to meet all of the requirements in order to obtain organic certification. Such new operations and poultry houses would include: (1) all poultry houses that first became certified organic 3 years or more after the final rule was published; and (2) new or replacement poultry houses operated by existing organic layer operations if such facilities were built 3 years or more after the final rule was published.

By providing an implementation period, both large and small existing organic producers would have additional time to implement the necessary changes in order to comply with the proposed rule. For example, operations choosing to expand will need land for the outdoor space. This new land would need to be certified organic before organic poultry could have access to it. Since land that has been treated with a prohibited substance in the past 3 years is not eligible for organic certification, the implementation period would allow organic producers to transition additional land to organic production. The 5-year implementation is based upon our estimate that the average age of an organic layer house is 7.6 years and has depreciated over 13 years for tax purposes. Therefore, a 5-year implementation period would allow organic egg producers, on average, to recover the costs of a poultry house. While we expect that organic egg producers will bear a greater cost burden for this proposed rule, this implementation period should also align with upgrades to or new construction for broiler houses. We expect that 15 percent of broiler houses generally are 5 years old or less and have a depreciation rate of 15 years.[96] While organic broiler houses are likely to be newer on average, given that the NOP was not established until 2002, we anticipate that the majority of organic broiler houses would be nearing the useful life of the broiler house when this rule is implemented.

All Other Requirements

For all other provisions of the proposed rule, AMS is proposing an implementation date of one year after the publication of the final rule. AMS chose a one-year period because all livestock and slaughter operations will need to change their Organic System Plans (OSPs) to meet the proposed requirements. During the one-year implementation period, certifying agents would need to update their OSP forms and make modifications to their certification processes in order to evaluate compliance with the proposed new requirements. This would include training staff and inspectors. AMS believes one year is adequate for organic operations, including for small businesses, to implement these changes.

Do these requirements overlap or conflict with other federal rules?

AMS has not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this proposed rule. AMS has reviewed rules administered by other Federal agencies, including APHIS and FSIS, and revised the proposed rule to avoid duplication. This action provides additional clarity on the animal welfare requirements for organic livestock that are specific and limited to the USDA organic regulations.

D. Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

AMS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, AMS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA), AMS is requesting OMB approval for a new information collection totaling 119,957 hours for the reporting and recordkeeping requirements contained in this proposed rule. OMB previously approved information collection requirements associated with the NOP and assigned OMB control number 0581–0191. AMS intends to merge this new information collection, upon OMB approval, into the approved 0581–0191 collection. Below, AMS has described and estimated the annual burden, *i.e.*, the amount of time and cost of labor, for entities to prepare and maintain information to participate in this proposed voluntary labeling program. The OFPA, as amended, provides authority for this action.

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[96] This reflects the percentage of broiler houses in the U.S., not specific to organic operations that were 15 years old or less in 2006. We applied that proportion to this analysis because the population of broilers has grown since that time, so houses that were older than 15 years are likely to have been upgraded or renovated in the interim. This data was reported in MacDonald, James M. *The Economic Organization of U.S. Broiler Production*. Economic Information Bulletin No. 38. Economic Research Service, U.S. Dept. of Agriculture, June 2008. The depreciation rate was reported in the Organic Egg Farmers of America Survey conducted in July 2014 and cited above.

Title: National Organic Program; Organic Livestock and Poultry Practices.

OMB Control Number: 0581–NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New collection.

Abstract: Information collection and recordkeeping is necessary to implement reporting and recordkeeping necessitated by amendments to §§ 205.238, 205.239, 205.241, and 205.242 for additional animal welfare standards for organic livestock production under the USDA organic regulations. OFPA authorizes the further development of livestock production standards (7 U.S.C. 6513(c)). This action is necessary to address multiple recommendations provided to USDA by the NOSB to add specificity about animal welfare practices with the purpose of ensuring consumers that conditions and practices for livestock products labeled as organic encourage and accommodate natural behaviors and utilize preventive health care slaughter practices.

All certified organic operations must develop and maintain an organic system plan for certification (§ 205.201). The OSP must include a description of practices and procedures to be performed and maintained, including the frequency with which they will be performed. Under the proposed rule, organic livestock operations would be subject to additional reporting requirements. The amendments to §§ 205.238, 205.239, 205.241, and 205.242 require livestock operations to provide specific documentation as part of an organic system plan to include conditions on livestock living conditions to permit natural behavior, including minimum space, outdoor access and utilize preventive health care practices (*e.g.* physical alterations, euthanasia).

The PRA also requires AMS to measure the recordkeeping burden. Under the USDA organic regulations each producer is required to maintain and make available upon request, for 5 years, such records as are necessary to verify compliance (§ 205.103). Certifying agents are required to maintain records for 5 to 10 years, depending on the type of record (§ 205.510(b)) and make these records available for inspection upon request (§ 205.501(a)(9)). The new information that livestock operations must provide for certification will assist certifying agents and inspectors in the efficient and comprehensive evaluation of these operations and will impose an additional recordkeeping burden for livestock operations. Certifying agents currently involved in livestock certification are required to observe the same recordkeeping requirements to maintain accreditation, therefore AMS expects that this proposed rule would not impose a different recordkeeping burden on certifiers.

Reporting and recordkeeping are essential to the integrity of the organic certification system. A clear paper trail is a critical tool to verify that practices meet the mandate of OFPA and the USDA organic regulations. This information supports the AMS mission, program objectives, and management needs by enabling us to assess the efficiency and effectiveness of the NOP. The information affects decisions because it is the basis for evaluating compliance with OFPA and USDA organic regulations, and for administering the NOP, management decisions and planning, and establishing the cost of the program. It also supports administrative and regulatory actions to address noncompliance with OFPA and USDA organic regulations.

This information collection is only used by the certifying agent and authorized representatives of USDA, including AMS and NOP staff. Certifying agents, including any affiliated organic inspectors, and USDA are the primary users of the information.

Respondents

AMS has identified three types of entities (respondents) that would need to submit and maintain information in order to participate in organic livestock certification. For each type of respondent, we describe the general paperwork submission and recordkeeping activities and estimate: (1) The number of respondents; (2) the hours they spend, annually, completing the paperwork requirements of this labeling program; and, (3) the costs of that activity.

1. *Certifying agents.* Certifying agents are State, private, or foreign entities accredited by USDA to certify domestic and foreign livestock producers and handlers as organic in accordance with OFPA and USDA organic regulations. Certifying agents determine if a producer or handler meets organic requirements, using detailed information from the operation about its specific practices and on-site inspection reports from organic inspectors. Currently, there are 77 certifying agents accredited under NOP; many of which certify operations based in the U.S. and abroad. AMS assumes all currently accredited certifying agents evaluate livestock operations for compliance with the USDA organic regulations and will therefore be subject to the amendments at §§ 205.238, 205.239, 205.241, and 205.242.

Each entity seeking to continue USDA accreditation for livestock will need to submit information documenting its business practices including certification, enforcement and recordkeeping procedures and personnel qualifications (§ 205.504). AMS will review that information during its next scheduled on-site assessment to determine whether to continue accreditation for the scope of livestock. Certifying agents will need to annually update the above information and provide results of personnel performance evaluations and the internal review of its certification activities (§ 205.510).

AMS projects that the additional components of organic system plans for livestock may entail longer review times than those for other types of organic system plans. AMS estimates the annual collection cost per certifying agent will be $3,000.94. This estimate is based on an estimated 91.8 labor hours per year at $32.69 per hour for a total salary component of $3,000.94 per year. This value is assumed to be an underestimate as the certifier bears a portion of the burden of the inspector and certifiers employ varying numbers of inspectors. The source of the hourly rate is the National Compensation Survey: Occupational Employment and Wages, May 2014, published by the Bureau of Labor Statistics. The rate is the mean hourly wage for compliance officers. This classification was selected as an occupation with similar duties and responsibilities to that of a certifying agent.[97]

2. *Organic Inspectors.* Inspectors conduct on-site inspections of certified operations and operations applying for certification and report the findings to the certifying agent. Inspectors may be the agents themselves, employees of the agents, or individual contractors. Certified operations will be inspected annually; a certifying agent may call for additional inspections on an as needed basis (§ 205.403(a)). Any individual who applies to conduct inspections of livestock operations will need to submit information documenting their qualifications to the certifying agent (§ 205.504(a)(3)). Inspectors will need to

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[97] Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. Bureau of Labor Statistics, Occupational Employment and Wages, May 2014, 13–1041 Compliance Officers.

provide an inspection report to the certifying agent for each operation inspected (§ 205.403(e)). AMS projects that on average, inspectors will spend 3 hours longer than average (10 hours) to complete an inspection report for livestock operations. This estimate is due to the additional components of the organic system plan that will need to be inspected. Inspectors do not have recordkeeping obligations; certifying agents maintain records of inspection reports.

According to the International Organic Inspectors Association (IOIA), there are approximately 250 inspectors currently inspecting crop, livestock, handling and/or wild crop operations that are certified or have applied for certification. AMS assumes that approximately half (125) of these inspectors inspect livestock operations.

AMS estimates the annual collection cost per inspector to be $6,731.37. This estimate is based on an estimated 321 additional labor hours per year at $20.97 per hour for a total salary component of $6,731.37 per year. The source of the hourly rate is the National Compensation Survey: Occupational Employment and Wages, May 2014, published by the Bureau of Labor Statistics. The rate is the mean hourly wage for agricultural inspectors (occupation code 45–2011).

3. *Producers and handlers.* Domestic and foreign livestock producers and handlers will submit the following information to certifying agents: an application for certification, detailed descriptions of specific practices, annual updates to continue certification, and changes in their practices. Handlers include those who transport or transform aquaculture products and may include bulk distributors, food and feed manufacturers, processors, or packers. Some handlers may be part of a retail operation that processes organic products in a location other than the premises of the retail outlet.

In order to obtain and maintain certification, livestock producers and handlers will need to develop and maintain an organic system plan. This is a requirement for all organic operations and the USDA organic regulations describe what information must be included in an organic system plan (§ 205.201). This proposed rule describes the additional information (§§ 205.238, 205.239, 205.241, and 205.242) that will need to be included in a livestock operation's organic system plan in order to assess compliance. Certified operations are required to keep records about their organic production and/or handling for 5 years (§ 205.103(b)(3)).

AMS used the NOP 2014 List of Certified Operations to estimate the number of livestock operations that would be affected by this proposed action. On that basis, AMS estimates that 4,177 currently certified foreign and domestic livestock operations who will be subject to the amendments at §§ 205.238, 205.239, 205.241, and 205.242.[98] To estimate the number of livestock operations that will apply for and become certified, AMS assumed that the proportion of livestock operations to all operations will be consistent with that as reported in information collection 0581–0191. On that basis, AMS estimates there will be 59 operations that will apply for certification and become certified organic livestock producers or handlers.

AMS estimates the annual collection cost per organic livestock producer to be $400.19. This estimate is based on an estimated 11.47 labor hours per year at $34.89 per hour for a total salary component of $400.19 per year. AMS estimates that as producers adapt to the requirements introduced by the amendments at §§ 205.238, 205.239, 205.241, and 205.242, the number of labor hours per year for currently certified operators will decrease. The source of the hourly rate is the National Compensation Survey: Occupational Employment and Wages, May 2014, published by the Bureau of Labor Statistics. The rate is the mean hourly wage for farmers, ranchers and other agricultural managers (occupation code 11–9013). Administrative costs for reporting and recordkeeping will vary among certified operators. Factors affecting costs include the type and size of operation, and the type of systems maintained. AMS also recognizes that operators bear a portion of the cost burden for the inspection which varies between certifiers.

Reporting Burden

Estimate of Burden: Public reporting burden for the collection of information is estimated to be 22 hours per year.

Respondents: Certifying agents, inspectors and livestock operations.

Estimated Number of Respondents: 4,438.

Estimated Number of Responses: 39,021.

Estimated Total Annual Burden on Respondents: 95,781 hours.

Total Cost: $2,767,692.

Recordkeeping Burden

Estimate of Burden: Public recordkeeping burden is estimated to be an annual total of 5.12 hours per respondent.

Respondents: Certifying agents and livestock operations.

Estimated Number of Respondents: 4,719.

Estimated Total Annual Burden on Respondents: 24,176 hours.

Total Cost: $843,498.

Comments: AMS is inviting comments from all interested parties concerning the information collection and recordkeeping required as a result of the proposed amendments to 7 CFR part 205. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments that specifically pertain to the information collection and recordkeeping requirements of this action should be sent to Paul Lewis Ph.D., Director Standards Division, National Organic Program, USDA–AMS–NOP, Room 2642–So., Ag Stop 0268, 1400 Independence Ave. SW., Washington, DC 20250–0268 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503. Comments on the information collection and recordkeeping requirements should reference the date and page number of this issue of the **Federal Register**. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. The comment period for the information collection and recordkeeping requirements contained in this proposed rule is 60 days.

F. Civil Rights Impact Analysis

AMS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis (CRIA), to address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, AMS has determined that this rule would only impact the organic practices of organic producers and that this rule has no potential for affecting producers in protected groups differently than the general population of producers. This rulemaking was initiated to clarify a regulatory requirement and enable consistent implementation and enforcement.

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[98] NOP 2014 List of certified USDA organic operations. Available on the NOP Web site, *http://apps.ams.usda.gov/nop/.*

Protected individuals have the same opportunity to participate in the NOP as non-protected individuals. The USDA organic regulations prohibit discrimination by certifying agents. Specifically, § 205.501(d) of the current regulations for accreditation of certifying agents provides that "No private or governmental entity accredited as a certifying agent under this subpart shall exclude from participation in or deny the benefits of the NOP to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status." Section 205.501(a)(2) requires "certifying agents to demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart" including the prohibition on discrimination. The granting of accreditation to certifying agents under § 205.506 requires the review of information submitted by the certifying agent and an on-site review of the certifying agent's client operation. Further, if certification is denied, § 205.405(d) requires that the certifying agent notify the applicant of their right to file an appeal to the AMS Administrator in accordance with § 205.681. These regulations provide protections against discrimination, thereby permitting all producers, regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status, who voluntarily choose to adhere to the rule and qualify, to be certified as meeting NOP requirements by an accredited certifying agent. This proposed rule in no way changes any of these protections against discrimination.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205 is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read:

Authority: 7 U.S.C. 6501–6522.

■ 2. Section 205.2 is amended by adding definitions for "Beak trimming", "Caponization", "Cattle wattling", "De-beaking", "De-snooding", "Dubbing", "Indoors", "Mulesing", "Outdoors", "Perch", "Pullet", "Roost", "Soil", "Stocking density", and "Toe clipping" in alphabetical order to read as follows:

§ 205.2 Terms defined.

* * * * *

Beak trimming. The removal of the curved tip of the beak.

* * * * *

Caponization. Castration of chickens, turkeys, pheasants and other avian species.

Cattle wattling. The surgical separation of two layers of the skin from the connective tissue for along a 2 to 4 inch path on the dewlap, neck or shoulders used for ownership identification.

* * * * *

De-beaking. The removal of more than the beak tip.

De-snooding. The removal of the turkey snood (a fleshy protuberance on the forehead of male turkeys).

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Dubbing. The removal of poultry combs and wattles.

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Indoors. The flat space or platform area which is under a solid roof. On each level the animals have access to food and water and may be confined if necessary. Indoor space for avian species includes, but is not limited to:

(1) *Pasture housing.* A mobile structure for avian species with 70 percent perforated flooring.

(2) *Aviary housing.* A fixed structure for avian species which has multiple tiers/levels with feed and water on each level.

(3) *Slatted/mesh floor housing.* A fixed structure for avian species which has both a slatted floor where perches, feed and water are provided over a pit or belt for manure collection; and litter covering the remaining solid floor.

(4) *Floor litter housing.* A fixed structure for avian species which has absorbent litter covering the entire floor.

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Mulesing. The removal of skin from the buttocks of sheep, approximately 2 to 4 inches wide and running way from the anus to the hock to prevent fly strike.

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Outdoors. Any area in the open air with at least 50 percent soil, outside a building or shelter where there are no solid walls or solid roof attached to the indoor living space structure. Fencing or netting that does not block sunlight or rain may be used as necessary.

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Perch. A rod or branch type structure that serves as a roost and allows birds to utilize vertical space in the house.

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Pullet. A female chicken or other avian species being raised for egg production that has not yet started to lay eggs.

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Roost. A flat structure over a manure pit that allows birds to grip with their toes as they would on a perch.

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Soil. The outermost layer of the earth comprised of minerals, water, air, organic matter, fungi and bacteria in which plants may grow roots.

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Stocking density. The weight of animals on a given unit of land at any one time.

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Toe clipping. The removal of the nail and distal joint of the back two toes of a male bird.

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■ 3. Section 205.238 is revised to read as follows:

§ 205.238 Livestock health care practice standard.

(a) The producer must establish and maintain preventive health care practices, including:

(1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites.

(2) Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, protein and/or amino acids, fatty acids, energy sources, and fiber (ruminants), resulting in appropriate body condition.

(3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites.

(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species.

(5) Physical alterations may be performed to benefit the welfare or hygiene of the animals, or for identification purposes or safety. Physical alterations, if used, must be performed on livestock at a reasonably

young age, with minimal stress and pain by a competent person.

(i) The following practices must not be routinely used on pigs and must be used only with documentation that alternative methods to prevent harm failed: needle teeth trimming (no more than top one-third of the tooth) and tail docking.

(ii) The following practices must not be performed on a certified operation: de-beaking, de-snooding, caponization, dubbing, toe trimming of chickens, toe trimming of turkeys unless with infra-red at hatchery, beak trimming after 10 days of age, tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep shorter than the distal end of the caudal fold, and mulesing of sheep.

(6) Administration of vaccines and other veterinary biologics.

(7) All surgical procedures necessary to treat an illness must employ best management practices to minimize pain, stress and suffering, with the use of appropriate and allowed anesthetics, analgesics and sedatives.

(8) Monitoring of lameness and keeping records of the percent of the herd or flock suffering from lameness and the causes.

(9) Ammonia levels in poultry houses must be less than 25 parts per million indoors. When ammonia levels in poultry houses exceed 10 parts per million, an operation must implement additional practices to reduce the ammonia levels below 10 parts per million.

(b) When preventive practices and veterinary biologics are inadequate to prevent sickness, an operation may administer synthetic medications allowed under § 205.603. Parasiticides allowed under § 205.603 may be used on:

(1) Breeder stock, when used prior to the last third of gestation but not during lactation for progeny that are to be sold, labeled, or represented as organically produced.

(2) Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labeled, or represented as organic.

(3) Synthetic medications may be administered in the presence of illness or to alleviate pain and suffering: Provided, that such medications are allowed under § 205.603.

(c) An organic livestock operation must not:

(1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under § 205.603, or any substance that contains a nonsynthetic substance prohibited in § 205.604. Milk from animals undergoing treatment with synthetic substances allowed under § 205.603 having withholding time cannot be sold as organic but may be fed to their own offspring. Milk from animals undergoing treatment with prohibited substances cannot be sold as organic or fed to organic livestock.

(2) Administer any animal drug in the absence of illness or to alleviate pain or suffering; with the exception of vaccinations and other veterinary biologics.

(3) Administer hormones for growth promotion, production or reproduction.

(4) Administer synthetic parasiticides on a routine basis.

(5) Administer synthetic parasiticides to slaughter stock.

(6) Administer animal drugs in violation of the Federal Food, Drug, and Cosmetic Act.

(7) Withhold medical treatment from a sick animal in an effort to preserve its organic status. All appropriate medications must be used to restore an animal to health when methods acceptable to organic production fail. Livestock treated with a prohibited substance must be clearly identified and neither the animal nor its products shall be sold, labeled, or represented as organically produced.

(8) Withhold individual treatment designed to minimize pain and suffering for injured, diseased or sick animals, which may include forms of euthanasia as recommended by the American Veterinary Medical Association.

(9) Neglect to identify and record treatment of sick and injured animals in animal health records.

(10) Practice forced molting or withdrawal of feed to induce molting.

(d) Organic livestock operations must have comprehensive plans to minimize internal parasite problems in livestock. The plan will include preventive measures such as pasture management, fecal monitoring, and emergency measures in the event of a parasite outbreak. Parasite control plans shall be approved by the certifying agent.

(e) *Euthanasia.* (1) Organic livestock operations must have written plans for prompt, humane euthanasia for sick or injured livestock.

(2) The following methods of euthanasia are not permitted: suffocation; blow to the head by blunt instrument; and the use of equipment that crushes the neck, including killing pliers or burdizzo clamps.

(3) Following a euthanasia procedure, livestock must be carefully examined to ensure that they are dead.

■ 4. Section 205.239 is revised to read as follows:

§ 205.239 Mammalian livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including:

(1) Year-round access for all animals to the outdoors, soil, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be temporarily denied access to the outdoors in accordance with paragraphs (b) and (c) of this section. Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. Yards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed without competition for food in a manner that maintains all animals in a good body condition. Continuous total confinement of any animal indoors is prohibited. Continuous total confinement of ruminants in yards, feeding pads, and feedlots is prohibited.

(2) For all ruminants, management on pasture and daily grazing throughout the grazing season(s) to meet the requirements of § 205.237, except as provided for in paragraphs (b), (c), and (d) of this section.

(3) Animals must be kept clean during all stages of life with the use of appropriate, clean, dry bedding, as appropriate for the species. When roughages are used as bedding, they must be organically produced and handled in accordance with this part by certified operations except as provided in § 205.236(a)(2)(i).

(4) Shelter designed to allow for:

(i) Sufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior;

(ii) Temperature level, ventilation, and air circulation suitable to the species;

(iii) Reduction of potential for livestock injury; and

(iv) Areas for bedding and resting that are sufficiently large, solidly built, and comfortable so that animals are kept clean, dry, and free of lesions.

(5) The use of yards, feeding pads, feedlots and laneways that shall be well-

drained, kept in good condition (including frequent removal of wastes), and managed to prevent runoff of wastes and contaminated waters to adjoining or nearby surface water and across property boundaries.

(6) Housing, pens, runs, equipment and utensils shall be properly cleaned and disinfected as needed to prevent cross infection and build-up of disease-carrying organisms.

(7) Dairy young stock may be housed in individual pens under the following conditions:

(i) Until weaning, providing that they have enough room to turn around, lie down, stretch out when lying down, get up, rest, and groom themselves; individual animal pens shall be designed and located so that each animal can see, smell, and hear other calves.

(ii) Dairy young stock shall be group-housed after weaning.

(iii) Dairy young stock over six months of age shall have access to the outdoors at all times including access to pasture during the grazing season, except as allowed under paragraph (c) of this section.

(8) Swine must be housed in a group, except:

(i) Sows may be housed individually at farrowing and during the suckling period.

(ii) Boars.

(iii) Swine with documented instance of aggression or recovery from an illness.

(9) Piglets shall not be kept on flat decks or in piglet cages.

(10) Exercise areas for swine, whether indoors or outdoors, must permit rooting, including during temporary confinement events.

(11) In confined housing with stalls, at least one stall must be provided for each animal in the facility at any given time. A cage must not be used as a stall. For group-housed swine, the number of individual feeding stalls may be less than the number of animals as long as all animals are fed routinely over a 24-hour period.

(12) At least 50 percent of outdoor access space must be soil, except when conditions threaten the soil or water quality, outdoor access without soil must be provided temporarily.

(b) The producer of an organic livestock operation may provide temporary confinement or shelter for an animal because of:

(1) Inclement weather;

(2) The animal's stage of life. Lactation is not a stage of life that would exempt ruminants from any of the mandates set forth in this part;

(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized;

(4) Risk to soil or water quality;

(5) Preventive healthcare procedures or for the treatment of illness or injury (neither the various life stages nor lactation is an illness or injury);

(6) Sorting or shipping animals and livestock sales, provided that the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;

(7) *Breeding.* Animals shall not be confined any longer than necessary to perform the natural or artificial insemination. Animals may not be confined to observe estrus; and

(8) 4–H, National FFA Organization, and other youth projects, for no more than one week prior to a fair or other demonstration, through the event and up to 24 hours after the animals have arrived home from the event. These animals must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event. Notwithstanding the requirements in paragraph (b)(6) of this section, facilities where 4–H, National FFA Organization, and other youth events are held are not required to be certified organic for the participating animals to be sold as organic, provided all other organic management practices are followed.

(c) The producer of an organic livestock operation may, in addition to the times permitted under paragraph (b) of this section, temporarily deny a ruminant animal pasture or outdoor access under the following conditions:

(1) One week at the end of a lactation for dry off (for denial of access to pasture only), three weeks prior to parturition (birthing), parturition, and up to one week after parturition;

(2) In the case of newborn dairy cattle for up to six months, after which they must be on pasture during the grazing season and may no longer be individually housed: Except, That, an animal shall not be confined or tethered in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving about freely;

(3) In the case of fiber bearing animals, for short periods for shearing; and

(4) In the case of dairy animals, for short periods daily for milking. Milking must be scheduled in a manner to ensure sufficient grazing time to provide each animal with an average of at least 30 percent DMI from grazing throughout the grazing season. Milking frequencies or duration practices cannot be used to deny dairy animals pasture.

(d) Ruminant slaughter stock, typically grain finished, shall be maintained on pasture for each day that the finishing period corresponds with the grazing season for the geographical location. Yards, feeding pads, or feedlots may be used to provide finish feeding rations. During the finishing period, ruminant slaughter stock shall be exempt from the minimum 30 percent DMI requirement from grazing. Yards, feeding pads, or feedlots used to provide finish feeding rations shall be large enough to allow all ruminant slaughter stock occupying the yard, feeding pad, or feed lot to feed without crowding and without competition for food. The finishing period shall not exceed one-fifth (1⁄5) of the animal's total life or 120 days, whichever is shorter.

(e) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage pastures and other outdoor access areas in a manner that does not put soil or water quality at risk.

■ 5. Section 205.241 is added to read as follows:

§ 205.241 Avian living conditions.

(a) *General requirement.* An organic poultry operation must establish and maintain year-round poultry living conditions which accommodate the health and natural behavior of poultry, including: Year-round access to outdoors; shade; shelter; exercise areas; fresh air; direct sunlight; clean water for drinking; materials for dust bathing; adequate outdoor space to escape from predators and aggressive behaviors suitable to the species, its stage of life, the climate and environment. Poultry may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section.

(b) *Indoor space requirements.* (1) All birds must be able to move freely, and engage in natural behaviors.

(2) Ventilation must be adequate to prevent build-up of ammonia. Ammonia levels must not exceed 25 parts per million. Operations must monitor ammonia levels monthly. When ammonia levels exceed 10 parts per million, operations must implement additional practices to reduce ammonia levels below 10 parts per million.

(3) For layers and mature birds, artificial light may be used to prolong the day length up to 16 hours. Artificial light intensity must be lowered

gradually to encourage hens to move to perches or settle for the night. Natural light must be sufficient indoors on sunny days so that an inspector can read and write when all lights are turned off.

(4) The following types of flooring may be used in shelter for avian species:

(i) Mesh or slatted flooring under drinking areas to provide drainage.

(ii) Houses, excluding pasture housing, with slatted/mesh floors must have 30 percent minimum of solid floor area available with sufficient litter available for dust baths so that birds may freely dust bathe without crowding.

(iii) Litter must be provided and maintained in a dry condition.

(5) Poultry houses must have sufficient exit areas, appropriately distributed around the building, to ensure that all birds have ready access to the outdoors.

(6) Flat roosts areas must allow birds to grip with their feet. Six inches of perch space must be provided per bird. Perch space may include the alighting rail in front of the nest boxes. All birds must be able to perch at the same time except for multi-tiered facilities, in which 55 percent of birds must be able to perch at the same time. Facilities for species which do not perch do not need to have perch or roost space.

(7) For layers, no more than 2.25 pounds of hen per square foot of indoor space is allowed at any time, except:

(i) *Pasture housing.* No more than 4.5 pounds of hen per square foot of indoor space.

(ii) *Aviary housing.* No more than 4.5 pounds of hen per square foot of indoor space.

(iii) *Slatted/mesh floor housing.* No more than 3.75 pounds of hen per square foot of indoor space.

(iv) *Floor litter housing.* No more than 3.0 pounds of hen per square foot of indoor space.

(8) For pullets, no more than 3.0 pounds of pullet per square foot of indoor space is allowed at any time.

(9) For turkeys, broilers and other meat type species, no more than 5.0 pounds of birds per square foot of indoor space is allowed at any time.

(10) All birds must have access to scratch areas in the house.

(11) Poultry housing must be sufficiently spacious to allow all birds to move freely, stand normally, stretch their wings and engage in natural behaviors.

(c) *Outdoor space requirements.* (1) Outside access and door spacing must be designed to promote and encourage outside access for all birds on a daily basis. Producers must provide access to the outdoors at an early age to encourage (train) birds to go outdoors. Outdoor areas must have suitable enrichment to entice birds to go outside. Birds may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section.

(2) Exit areas must be designed so that more than one bird can exit at a time and all birds in the house can exit within one hour.

(3) For layers, no more than 2.25 pounds of bird per square foot of outdoor space is allowed at any time.

(4) For pullets, no more than 3.0 pounds of pullet per square foot of outdoor space is allowed at any time.

(5) For turkeys, broilers and other meat type species, no more than 5.0 pounds of bird per square foot of outdoor space is allowed at any time.

(6) Space that has a solid roof overhead and is attached to the structure providing indoor space is not outdoor access and must not be included in the calculation of outdoor space.

(7) Shade may be provided by structures, trees, or other objects in the environment.

(8) At least 50 percent of outdoor access space must be soil, except when conditions threaten the soil or water quality, outdoor access without soil must be provided temporarily.

(d) The producer of an organic poultry operation may temporarily confine birds. Each instance of confinement must be recorded. Operations may confine birds because of:

(1) Inclement weather, including when air temperatures are under 40 degrees F or above 90 degrees F.

(2) The animal's stage of life, including the first 4 weeks of life for broilers and other meat type birds and the first 16 weeks of life for pullets.

(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized, however the potential for disease outbreak is not sufficient cause. A documented occurrence of a disease in the region or relevant migratory pathway must be present in order to confine birds.

(4) Risk to soil or water quality.

(5) Preventive healthcare procedures or for the treatment of illness or injury (neither various life stages nor egg laying is an illness or injury).

(6) Sorting or shipping birds and poultry sales. Provided the birds are maintained under continuous organic management throughout the extent of their allowed confinement.

(7) Nest box training. Birds shall not be confined any longer than two weeks to teach the proper behavior.

(8) 4–H, National FFA Organization, and other youth projects, for no more than one week prior to a fair or other demonstration, through the event and up to 24 hours after the birds have arrived home at the conclusion of the event. These birds must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event. Notwithstanding the requirements in paragraph (d)(6) of this section, facilities where 4–H, National FFA Organization, and other youth events are held are not required to be certified organic for the participating birds to be sold as organic, provided all other organic management practices are followed.

(e) The producer of an organic poultry operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage outdoor access in a manner that does not put soil or water quality at risk.

■ 6. Section 205.242 is added to read as follows:

§ 205.242 Transport and slaughter.

(a) *Transport.* (1) Certified organic livestock must be clearly identified as organic, transported in pens within the livestock trailer clearly labeled for organic use and be contained in those pens for the duration of the trip.

(2) All livestock must be fit for transport to auction or slaughter facilities.

(i) Calves must have a dry navel cord and be able to stand and walk without human assistance.

(ii) Sick, injured, weak, disabled, blind, and lame animals must not be transported for sale or slaughter. Such animals may be medically treated or euthanized.

(3) Adequate and season-appropriate ventilation is required for all livestock trailers, shipping containers and any other mode of transportation used to protect animals against cold and heat stresses.

(4) Bedding must be provided on trailer floors and in holding pens as needed to keep livestock clean, dry, and comfortable during transportation and prior to slaughter. Poultry crates are exempt from the bedding requirement. When roughages are used for bedding, they must have been organically produced and handled by a certified organic operation(s).

(5) Arrangements for water and organic feed must be made if transport time exceeds twelve hours.

(i) Organic livestock operations must transport livestock in compliance with the Federal Twenty-Eight Hour Law (49

U.S.C. 80502) and the regulations at 9 CFR 89.1 through 89.5.

(ii) The producer or handler of an organic livestock operation must provide all non-compliant records and subsequent corrective action related to livestock transport during the annual inspection.

(6) Organic operations must have in place emergency plans to address possible animal welfare problems that might occur during transport.

(b) *Mammalian slaughter.* (1) Organic operations that slaughter organic livestock must be in compliance with the Federal Meat Inspection Act (21 U.S.C. 603(b) and 21 U.S.C. 610(b) and the regulations at 9 CFR part 313) regarding humane handling and slaughter of livestock.

(2) Organic operations that slaughter organic exotic animals must be in compliance with the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.)* and the regulations at 9 CFR parts 313 and 352 regarding the humane handling and slaughter of exotic animals.

(3) Organic operations that slaughter organic livestock must provide all non-compliant records related to humane handling and slaughter issued by the controlling national, federal or state authority and all records of subsequent corrective actions during the annual organic inspection.

(c) *Avian slaughter.* (1) Organic operations that slaughter organic poultry must be in compliance with the Poultry Products Inspection Act requirements (21 U.S.C. 453(g)(5) and the regulations at 9 CFR 381.1(b)(v), 381.90, and 381.65(b)).

(2) Organic operations that slaughter organic poultry must provide all non-compliant records related to the use of good manufacturing practices in connection with slaughter issued by the controlling national, federal or state authority and all records of subsequent corrective actions during the annual organic inspection.

(3) Organic operations that slaughter organic poultry, but are exempt from or not covered by the requirements of the Poultry Products Inspection Act, must ensure that:

(i) No lame birds may be shackled, hung or carried by their legs;

(ii) All birds shackled on a chain or automated system must be stunned prior to exsanguination; and

(iii) All birds must be irreversibly insensible prior to being placed in the scalding tank.

Dated: April 4, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

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Part III

The President

Proclamation 9418—National Crime Victims' Rights Week, 2016
Proclamation 9419—National Volunteer Week, 2016
Proclamation 9420—Pan American Day and Pan American Week, 2016
Proclamation 9421—National Former Prisoner of War Recognition Day, 2016
Executive Order 13724—Amending Executive Order 12137

Federal Register
Vol. 81, No. 71
Wednesday, April 13, 2016

Presidential Documents

Title 3—

The President

Proclamation 9418 of April 8, 2016

National Crime Victims' Rights Week, 2016

By the President of the United States of America

A Proclamation

In the aftermath of a crime, it is imperative that victims have access to the resources they need to recover and to ensure that justice is done. During the 35th National Crime Victims' Rights Week, we stand with victims and their families, and we strive to ensure every person—regardless of age, color, or creed—who is victimized by crime knows they are protected, respected, and heard.

Certain populations are more vulnerable to crime, and my Administration is committed to defending the rights of crime victims everywhere and safeguarding their access to essential resources and services. Violence against women, including sexual assault, domestic violence, dating violence, and stalking, is too prevalent in our society, and we will continue doing everything we can to shine a light on these crimes wherever they exist, including on our campuses and in our military. We are taking action to reduce the number of untested rape kits in America—critical tools that can deliver justice for victims in the wake of an assault—and the Department of Justice issued new guidance to prevent gender bias when responding to cases of sexual assault and domestic violence. Additionally, the *My Brother's Keeper* initiative is working to reduce violence and secure second chances for our youth to ensure all young people—including those from communities disproportionately affected by violent crime—have the opportunities and resources they need to reach their full potential.

A victim's immediate interactions after a crime are often with the law enforcement officials who are the first to respond. In 2014, I created the President's Task Force on 21st Century Policing (Task Force), and in addition to promoting ways to enhance public safety across America, the Task Force issued recommendations to strengthen public trust between local law enforcement and communities, which increases the likelihood that victims and witnesses will cooperate with law enforcement after a crime. My Administration will also continue working to support the most vulnerable among us who are subject to heinous crimes—including children who are forced into sex trafficking and denied their inherent human rights, and seniors who, in too many cases, are exposed to abuse, neglect, and exploitation.

When a crime does occur, we owe it to those who suffer in its aftermath to uplift them and stand beside them. This week, as we honor those dedicated to ensuring services and support are available for victims of crime, let us rededicate ourselves to protecting crime victims' rights and upholding the basic belief that all people should be able to live safely and free from fear, violence, and intimidation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 10 through April 16, 2016, as National Crime Victims' Rights Week. I call upon all Americans to observe this week by participating in events that raise awareness of victims' rights and services, and by volunteering to serve victims in their time of need.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–08699
Filed 4–12–16; 11:15 am]
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Presidential Documents

Proclamation 9419 of April 8, 2016

National Volunteer Week, 2016

By the President of the United States of America

A Proclamation

Each day, humble people of every background and belief come together to fulfill the timeless responsibility we have as Americans: to accept certain obligations to one another. People of all ages can volunteer, and anyone can, through the smallest of acts, do their part to improve the lives of others. This week, we celebrate the selfless individuals around our country who channel their civic virtues through volunteerism, and we encourage more people to make service an integral part of their lives.

In National Parks and public schools, food pantries and animal shelters, volunteers fan out in communities across America, devoted to a cause bigger than themselves. In crisis and disaster, they offer not only goods and resources, but also understanding and sympathy to those desperate and distraught. In underserved neighborhoods, they help cultivate hope and inspiration, rolling back poverty and roadblocks to opportunity. Generations of these often unsung heroes—driven by their conviction that we all have a stake in each other—have lifted up those they know and those they do not, making our Nation and our world a better place.

My Administration is dedicated to giving people more opportunities to serve. I established a Task Force on Expanding National Service that supports the expansion of service and volunteer projects to address some of our Nation's highest priorities. Through the Corporation for National and Community Service, AmeriCorps and Senior Corps have mobilized millions of Americans, sending them to areas in need of dedicated volunteers. Under these programs, we have established campaigns that address specific needs in vulnerable communities, such as increasing access to college, improving STEM education, and preserving our environment. I have also called on 200,000 Federal scientists and engineers to help mentor young people in STEM fields. And in 2014, I launched the Employers of National Service initiative, connecting employers with AmeriCorps and Peace Corps alumni—because often the most talented, tireless, and mission-driven employees are those who have given of themselves for the betterment of others. In the time since, hundreds of employers have signed up to participate in this program.

Volunteers help drive our country's progress, and day in and day out, they make extraordinary sacrifices to expand promise and possibility. During National Volunteer Week, let us shed the cynicism that says one person cannot make a difference in the lives of others by embracing each of our individual responsibilities to serve and shape a brighter future for all.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 10 through April 16, 2016, as National Volunteer Week. I call upon all Americans to observe this week by volunteering in service projects across our country and pledging to make service a part of their daily lives. To find a service opportunity nearby, visit www.Serve.gov.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

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Presidential Documents

Proclamation 9420 of April 8, 2016

Pan American Day and Pan American Week, 2016

By the President of the United States of America

A Proclamation

A decade before the turn of the 19th century, representatives of countries from across the Western Hemisphere formed what would become the Organization of American States, striving to ensure peace and democracy through unity and cooperation among our nations. As we mark 126 years since its founding, we also celebrate the 15th anniversary of the Inter-American Democratic Charter—a declaration of our belief in democracy as the common form of government for all countries in our hemisphere. On Pan American Day and during Pan American Week, we reflect on the progress our countries have made together, and we recommit to reaching for a brighter day for all our peoples.

Throughout our hemisphere, increased integration has generated greater growth and prosperity. Since I took office, exports and imports between the United States and the rest of the hemisphere have increased by more than 50 percent. We are involved in more trade and economic partnerships that reduce poverty, spur opportunity, and empower young people with the skills and job training they need to compete in the global economy. Our nations have partnered to develop clean, affordable, and reliable energy sources and ensure all countries have open access to data to combat climate change—a reality that threatens all our peoples and that we addressed in Paris late last year, when the world came together to negotiate the most ambitious climate agreement in history.

The nations of the Americas have made tremendous progress on important issues, and our work remains rooted in the bonds of friendship and family between our peoples. For too long, the United States and Cuba remained isolated, and while our governments will continue to have areas of disagreement, our people have long shared common values and ideals. That is why we reestablished diplomatic relations between our countries—for the first time in over 50 years, the American flag flies above our reopened embassy in Havana; and I recently visited our neighbor 90 miles to the South, becoming the first United States President to do so in nearly nine decades. By extending a new hand of friendship to the Cuban people, we mark the beginning of a relationship that will offer fresh hope for both our futures and improve the lives of those living in both our countries. Following my trip to Cuba, I visited Argentina, which has begun advancing ambitious reforms to spur economic growth and has pledged to help address important global challenges, such as peacekeeping and the Syrian refugee crisis.

Across the board, the United States has deepened our engagement in the Americas. We initiated the 100,000 Strong in the Americas initiative to encourage more exchanges between our hemisphere's students. Last year, I launched the Young Leaders of the Americas Initiative, which will address opportunity gaps that persist for too many of our neighboring nations' youth by empowering them with the tools and resources they need to reach their full potential. Just as our countries must foster hope and prosperity, we must also address serious challenges. We will continue defending and strengthening civil society, because when all our people have a voice in shaping the future of our hemisphere, we all do better. The United States is working with Colombia to reduce violence and achieve peace, as we do throughout Central America. We will also keep coordinating with the nations of the Americas to prevent, detect, and respond to the spread of Zika. And later this year, I look forward to joining other leaders of the Asia-Pacific Economic Cooperation forum in Peru for the next Economic Leaders' meeting.

Millions of people in the United States are tied to the rest of the countries in our hemisphere through commerce and family. We are more than just nations—we are neighbors, bound in common cause and possibility not by our leaders, but by the citizens of the Americas and the interests we share. Let us move forward, as one people, in a spirit of unity and cooperation. Together, we can reach a future in which every young person—from Argentina to Alaska—knows peace, dignity, and opportunity, and can embark on paths that stretch beyond their neighborhood and into the wider Western Hemisphere and the entire world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 14, 2016, as Pan American Day and April 10 through April 16, 2016, as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of the other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

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Presidential Documents

Proclamation 9421 of April 8, 2016

National Former Prisoner of War Recognition Day, 2016

By the President of the United States of America

A Proclamation

Under the flag of the United States, generations of women and men, united in a common cause greater than themselves, have served to defend the ideals that bind us together as a Nation and that preserve our country as a beacon of hope and freedom around the world. On National Former Prisoner of War Recognition Day, we salute the selfless service members throughout our history who gave of their own liberty to ensure ours, and we renew our commitment to remaining a Nation worthy of their extraordinary sacrifices.

In wars and engagements since America's founding, brave patriots have experienced indescribable suffering as prisoners of war. Often physically and mentally tortured, starved, and put through the worst most of us could imagine, these heroes are owed a debt we can never fully repay, and their families—who exhibited tremendous fortitude in the face of grueling uncertainty—are worthy of our profound gratitude. The values of honor, courage, and selflessness that drive our Armed Forces are particularly acute in those who have been taken as prisoners of war, sustaining them through days, weeks, and sometimes years of profound hardship endured for the sake of securing the blessings of liberty for all.

America's former prisoners of war—and all who don our uniform to keep us safe—have helped make our Nation the strongest and most prosperous in the history of the world. Our eternal obligation is to care for them and uphold our everlasting promise to never leave our men and women on the battlefield behind. Let us reaffirm our adherence to these ideals and honor our former prisoners of war by paying them the gratitude and respect they deserve.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2016, as National Former Prisoner of War Recognition Day. I call upon all Americans to observe this day of remembrance by honoring all American prisoners of war, our service members, and our veterans. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–08710
Filed 4–12–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Executive Order 13724 of April 8, 2016

Amending Executive Order 12137

By the authority vested in me as President by the Constitution and the laws of the United States, including section 19 of the Peace Corps Act, as amended (22 U.S.C. 2518) and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Amendment to Executive Order 12137.* Executive Order 12137 of May 16, 1979, as amended, is further amended as follows:

(a) In section 1–1, a new section 1–113 is added to read as follows:

"1–113. The functions of adopting, altering, and using an official seal or emblem of the Peace Corps as set forth in section 19 of the Peace Corps Act (22 U.S.C. 2518) is hereby delegated to the Director of the Peace Corps."

(b) In section 1–3, section 1–301(e) is deleted.

Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
April 8, 2016.

[FR Doc. 2016–08713
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Federal Register
Vol. 81, No. 71
Wednesday, April 13, 2016

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FEDERAL REGISTER PAGES AND DATE, APRIL

18739–19020	1
19021–19466	4
19467–19856	5
19857–20218	6
20219–20522	7
20523–21222	8
21223–21448	11
21449–21698	12
21699–22022	13

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

3474	19355

3 CFR

Proclamations:	
9410	19465
9411	19849
9412	19851
9413	19853
9414	19855
9415	20211
9416	20213
9417	20215
9418	22013
9419	22015
9420	22017
9421	22019
Executive Orders:	
12137 (amended by 13724)	22021
13723	19017
13724	22021
Administrative Orders:	
Memorandums:	
Memorandum of March 18, 2016	18739
Memorandum of March 29, 2016	19015
Notices:	
Notice of March 30, 2016	19019
Notice of April 4, 2016	20217

5 CFR

630	20523

6 CFR

5	19857
19	19355
Proposed Rules:	
5	19932

7 CFR

16	19355
271	20524
272	20524
275	20524
319	20525, 20528
1430	21699
Proposed Rules:	
205	21956
251	19933
271	19500, 19933
272	19933
277	19933
278	19500
319	19060, 19063, 20575
1150	18802

9 CFR

381	21708
Proposed Rules:	
381	21758

10 CFR

72	19021
73	21449
431	20528
Proposed Rules:	
430	20261, 21276

12 CFR

249	21223
1026	19467
Proposed Rules:	
217	20579

13 CFR

Proposed Rules:	
123	19934

14 CFR

39	18741, 19022, 19024, 19467, 19470, 19472, 19482, 20219, 20222, 21234, 21236, 21240, 21242, 21244, 21246, 21250, 21253, 21255, 21259, 21261, 21263, 21709, 21711, 21713, 21716, 21720, 21722, 21726, 21730, 21732
61	21449
71	19484, 19485, 19486, 19856, 19860, 21735
93	19861
141	21449
Proposed Rules:	
23	20264
31	19502
39	18804, 18806, 19505, 19509, 19512, 19514, 19516, 21284, 21286, 21288, 21484, 21486, 21489, 21491, 21493, 21495, 21497, 21501, 21503, 21762, 21766, 21768, 21770
71	20582, 21772, 21774
382	20265

15 CFR

742	19026
750	19026
774	19026

16 CFR

1211	20224
Proposed Rules:	
460	19936
1025	21775

17 CFR

3	18743
240	18747
Proposed Rules:	
1	20583

241	20583

18 CFR

35	18748
281	18748
1307	18748

19 CFR

4	18748
10	18748
12	18749
24	18749
122	18749

20 CFR

404	19032

Proposed Rules:

30	19518

21 CFR

1	20092
11	20092
56	19033
510	18749
520	18749
522	18749
524	18749
528	18749
529	18749
556	18749
558	18749

Proposed Rules:

56	19066
330	19069

22 CFR

171	19863
205	19355

24 CFR

5	19355
92	19355
570	19355
574	19355
576	19355
578	19355
1003	19355

25 CFR

169	19877

26 CFR

1	18749, 20858

Proposed Rules:

1	20587, 20588, 20912, 21795

28 CFR

38	19355

29 CFR

2	19355
100	19486
405	20245
406	20245
2509	20946
2510	20946
2550	20946, 21002, 21089, 21139, 21147, 21181, 21208

30 CFR

Proposed Rules:

550	19718
943	20591

31 CFR

554	19878

Proposed Rules:

50	18950
1010	19086
1023	19086

33 CFR

100	19036, 19038, 21462
117	18749, 18750, 19040, 19041, 19488, 20529, 21267, 21269, 21465
155	20247
164	20250
165	19041, 19488, 19884, 21269

Proposed Rules:

100	19939, 19942
117	19094
165	19097, 20592

34 CFR

75	19355
76	19355
668	20250, 20251

Proposed Rules:

Ch. II	18818
Ch. III	20268, 21808
612	18808
686	18808

36 CFR

Proposed Rules:

7	18821

37 CFR

42	18750

Proposed Rules:

2	19296

38 CFR

9	21465
17	19887
50	19355
61	19355
62	19355

39 CFR

3020	20530

Proposed Rules:

3020	21506

40 CFR

9	19490, 20535
52	18766, 19492, 19495, 20540, 20543, 21468, 21470, 21472, 21735, 21747
60	20172
63	20172
81	20543
180	19891, 20545, 21472, 21752
300	20252
721	20535
1800	21478

Proposed Rules:

52	19097, 19098, 19519, 19526, 20598, 20600, 21290, 21295, 21814
258	20274
261	21272
300	20277
721	21830

42 CFR

Proposed Rules:

88	19108
447	21479

43 CFR

Proposed Rules:

3100	19110
3160	19110
3170	19110

44 CFR

62	20257
67	19498

45 CFR

75	19043
87	19355
1050	19355

Proposed Rules:

1355	20283

47 CFR

12	20258
15	19896
54	21272
73	19432
74	19432

Proposed Rules:

65	21511
73	19944

49 CFR

1	19818
571	19902
1201	19904

Proposed Rules:

191	20722
192	20722
571	19944

50 CFR

17	19923, 20058, 20450
20	21480
92	18781
223	20058
224	20058
229	20550
300	18789, 18796
635	18796, 21481
648	18801, 19044
660	19054
665	20259
679	19058, 19059, 19931, 21482, 21756

Proposed Rules:

17	19527, 20302
216	19542
622	19547
648	20316

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws.*

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S. 1180/P.L. 114–143
Integrated Public Alert and Warning System Modernization Act of 2015 (Apr. 11, 2016; 130 Stat. 327)
Last List April 7, 2016

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